

# CHILDREN'S PROTECTION CODE

Ordinance # 98-900-01

## SECTION 1 SHORT TITLE AND PURPOSE

**1.01. Short Title.** This ordinance shall be entitled "The Children's Protection Code."

**1.02. Purpose.** The Children's Protection Code shall be liberally interpreted and construed to fulfill the following expressed purposes:

- (a) To provide for the welfare, care and protection of the Indian children and families of the Little River Band of Ottawa Indians;
- (b) To provide for the safety of tribal children and preserve family unity;
- (c) To provide procedures for intervention in state court proceedings regarding Indian Children.
- (d) To provide procedures for the transfer of jurisdiction over Indian Children from state and other Tribal Courts to this Tribal Court.
- (e) To provide for the exercise of the Tribe's rights and responsibilities under the Indian Child Welfare Act 1978.

## SECTION 1a PHILOSOPHY AND GOALS

- (a) To take such actions that will best serve the spiritual, emotional, mental and physical welfare of the child and the best interest of the Tribe to prevent the abuse, neglect and abandonment of children;
- (b) To provide a continuum of services for children and their families with emphasis whenever possible on prevention, early intervention and community-based alternatives;
- (c) To protect the rights of and ensure fairness to the children, parents, guardians, custodians and other parties who come before Tribal Court, the state courts, or other Tribal courts;
- (d) To recognize, acknowledge, and respect the many diverse and important Anishnaabek customs, traditions and ways in the Indian community;
- (e) To preserve and strengthen the child's cultural and ethnic identity whenever possible.

## SECTION 1b ADOPTION; AMENDMENT; REPEAL; SEVERABILITY

**1b.01. Adoption.** This Ordinance is adopted by motion on June 8, 1998, which superseded the Interim Code adopted by Resolution # 96-0701-04.

- a. Amended by Resolution #06-1213-823 Permanent Adoption to change the number of members on the Binojeeuk Commission.
- b. Amended by Resolution #07-1031-564 Permanent Adoption of changes to Code to change name of the Code, add Section 31, adjust time lines to conform with court rules and other codes, and modify the definitions.

**1b.02. Amendment.** The Ordinance may be amended by the Tribal Council in accordance with the Constitution and any rules set forth in the Administrative Procedures Act – Ordinances.

**1b.03. Repeal.** This Ordinance may be repealed by the Tribal Council in accordance with the Constitution and any rules set forth in the Administrative Procedures Act – Ordinances.

**1b.04. Severability Clause.** If any portion of this Ordinance or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable.

## **SECTION 2 DEFINITIONS**

### **2.01. As used in this Code:**

(a) “*Abandoned*” The failure of the parent(s) or guardian to provide reasonable support and to maintain regular contact with the child, including provisions of adequate supervision. The voluntary temporary transfer of physical custody of a child by such child’s parent(s) or guardian with extended family members or voluntary consent to placement does not constitute abandonment.

(b) “*Abuse*” The infliction of physical, emotional or mental injury or exploiting or overworking a child to such an extent that the child’s health or emotional well-being is endangered.

(c) “*Adjudication*” A formal court hearing requiring the presence of all parties, attorneys, witnesses, and caseworkers where evidence is presented and the court makes findings regarding the allegations in the petition and determines whether or not the minor is a child in need who should be made a temporary ward of the court. If the allegations are not sustained, the Court shall dismiss the matter and release the child. If clear and convincing evidence sustains the allegations the court shall find the minor to be a “child in need” and set the matter for disposition. Other orders needed for the child’s protection may be entered by the Court at this time.

(d) “*Adult*” A person eighteen (18) years of age or older or otherwise emancipated by order of a court of competent jurisdiction.

(e) “*Binojeeuk Commission*” A commission established under this code, whose members are Appointed by the Tribal Council to protect the best interests of the children of the Tribe and promote the stability and security of the Tribe.

(f) “*Child/Children*” A person or persons less than eighteen (18) years old and has not been emancipated by order of a court of competent jurisdiction.

(g) “*Child Abuse*” Harm or threatened harm to a child’s health or welfare by a person responsible for the child’s health or welfare, which harm occurs or is threatened through non-accidental physical or mental injury or sexual abuse.

(h) “*Child-in-Need-of-Care*” A child:

- (1) who has no parent(s), guardian(s) or custodian(s), with legal authority, who is willing, available and able to care for the child; or
- (2) who has suffered or is likely to suffer a physical injury which causes or creates a substantial risk of death, disfigurement or impairment of bodily function, i.e., abuse; or
- (3) who is or is alleged to be a victim of sexual abuse; or
- (4)-who has committed delinquent acts as a result of parental pressure, guidance, approval or failure to properly supervise; or
- (5) who is a victim of “abuse” as defined in this code; or
- (6) who is a victim of “neglect” as defined in this code; or
- (7) who is born addicted to alcohol and/or exposed to a controlled substance; or
- (8) whose parents are separated and no court of competent jurisdiction has issued a temporary custody and support order; or
- (9) whose parent has been convicted of or where there are substantiated allegations of a violent crime or criminal sexual crime against the other parent or a sibling of the

child, or other crime of a nature that demonstrates the parent's unfitness to adequately parent the child; or

(10) who is a drug endangered child i.e.; a minor found in a home (a) with caregivers who are manufacturing controlled substances in/around the home or (b) where caregivers are dealing/using controlled substances and the children are exposed to the drug or drug residue.

(i) "*Child Placement Agency*" An agency licensed or approved pursuant to Tribal or state law.

(j) "*Child Welfare Caseworker*" Member of the Family Services Department of the Little River Band of Ottawa Indians who serves as liaison and case supervisor for families and children coming under the provisions of this code..

(l) "*Controlled Substance*" A controlled substance as defined or hereafter by the Public Acts of Michigan. Currently, such controlled substances are defined by Act No. 368 of the Public Acts of 1978, as amended, being sections 333.7101 to 333.7544 of the Michigan Compiled laws or Tribal law.

(m) "*Court Appointed Special Advocate*" A person appointed by the Court to represent the interests of a child who is before the Court.

(o) "*Court or Tribal Court*" The Court of the Little River Band of Ottawa Indians.

(p) "*Custodian*" A person other than a parent(s) or guardian(s) to whom temporary physical custody of the child has been given by the Court, parent(s) or guardian(s) unless such right is limited by Court order. Any Indian person who has legal custody of an Indian child under tribal law or custom or under state law or to whom temporary physical custody has been transferred by the parent(s) of such child.

(q) "*Dispositional Hearing*" A formal court hearing including all parties, attorneys, and caseworkers that follows the adjudication hearing. At disposition, if the goal is family reunification and conditions do not permit immediate return of the child, the responsible social workers must present a detailed case plan to the Court that includes services to assist the child and family. If the plan includes placement of the child with someone other than the parent or a relative, the plan must state the specific reasons for making such a recommendation.

(r) "*Domicile*" A person's permanent home, legal home or main residence. The domicile of a child is generally that of the custodial parent, guardian or other person with legal custody. Domicile includes the intent to establish a permanent home or the place that the parent, guardian or custodian considers the permanent home.

(s) "*Extended Family*" A person who is the child's grandparent, aunt, uncle, brother, sister, brother-in-law, sister-in-law, niece, nephew, first cousin, second cousin, stepparent or non-kinship relations recognized by Immediate Family members.

(t) "*Father*" means:

(1) a man married to the mother at any time from a minor's conception to the minor's birth unless the minor is determined to be a child born out of wedlock - a child conceived and born to a woman who is unmarried from the conception to the birth of the child or a child determined by judicial notice or otherwise to have been conceived or born during a marriage but who is not the issue of that marriage.

(2) a man who legally adopts the minor or

(3) a man whose paternity is established in one of the following ways:

(i) the man and the mother of the minor acknowledge that he is the minor's father in a writing executed, notarized and filed in the Tribal or probate court; or

(ii) the man and the mother file a joint written request for a correction of the

- certificate of the birth pertaining to the minor that results in issuance of a substituted certificate recording the birth; or
- (iii) the man acknowledges the minor without the acknowledgment of the mother with the written approval of the Court; or
- (iv) a man who by order of affiliation or by judgment of paternity is determined to be the father of the minor.
- (u) “*Foster Home*” A facility licensed and approved pursuant to Tribal or state law.
- (v) “*Guardian*” A person assigned by a court of law other than a parent having the duty and authority to provide care and control of a child.
- (w) “*Guardian Ad Litem*” An attorney or lay advocate appointed by the Court to represent the best interests of the child.
- (x) “*Immediate Family*” Parent, stepparent, siblings, step-siblings, half-siblings.
- (y) “*Indian*” Any person who is a member of a federally recognized Indian Tribe or who is an Alaskan Native and a member of a Regional Corporation.
- (z) “*Indian Child*” Any unmarried person under the age of eighteen and is either (a) a member of a Federally recognized Indian Tribe or (b) is eligible for membership in such a Tribe and is the biological child of a member of such a Tribe.
- (aa) “*Least restrictive placement*” The placement alternative that is the least restrictive upon the child and the family for obtaining the objective of the Court and this code. This dispositional concept directs the Court to select the least drastic method of achieving its goal.
- (bb) “*Legal Custody*” The right to care, custody, and control of a child and the duty to provide food, clothing, shelter, ordinary medical care, education, and discipline for a child and, in an emergency, to authorize surgery or extraordinary care. The parents of a child are vested with legal custody unless such custody is taken from the parents or limited by Court Order. Only the parents with legal custody may give temporary physical and/or legal custody of a child to an adult member of their immediate or extended family unless such right is limited by Court Order.
- (cc) “*License*” Any official and revocable authorization granted for a limited period of time by the Binojeeuk Commission pursuant to this ordinance to an individual or entity to conduct or participate in any activity regulated by this ordinance on the reservation of the Little River Band of Ottawa Indians.
- (dd) “*Minor*” An unemancipated person less than eighteen (18) years of age.
- (ee) “*Multidisciplinary Team*” A multi-disciplinary team established to involve and coordinate the child protection services of various agencies and to assist in the investigation and prosecution of cases involving sexual and physical abuse of a child.
- (ff) “*Neglect*” Where the parent, guardian, or custodian has not provided adequate food, clothing, shelter, medical care, education, care or supervision necessary for the child’s well-being, i.e. neglect.
- (gg) “*Parent*” A person who is legally responsible for the control and care of the minor, including the mother, father, guardian or custodian including a natural or adoptive parent but does not include persons whose parental rights have been terminated nor does it include the unwed father whose paternity has not been acknowledged or established.
- (hh) “*Parental Rights*” Legal rights which include responsibilities, duties and obligations between the parent and the child including, but not limited to:
- (1) *Care, custody, maintenance and protection.* A child has a right to call upon the parent to exercise those duties.
  - (2) *Advise the child.* The law presumes that advice is given in good faith and in the best interest of the child.

- (3) *Right to discipline.* A parent has the right to correct the child by reasonable and timely punishment, including corporal punishment which must be corrective and not punitive.
- (4) *Control of education.* Parents may educate children in places other than public schools.
- (5) *Religious training.* The religious training of minor children, or lack of it, is a matter solely within the parent's control.
- (6) The right to a child's services and earnings.
- (7) The right to direct the child's activities and make decisions regarding the child's care and control, education, health and religion.

(ii) "*Permanency Planning Hearing*" A formal court hearing requiring the presence of all parties, attorneys, and caseworkers. This hearing must be held within 12 months after the entry of an order of disposition and every six months thereafter as long as the case remains open. The Court shall review the status of the case and progress being made toward reunification. If the Court determines that the child shall not be returned to the parent(s), the Court shall order permanent placement with a relative, long term or residential care.

(jj) "*Presenting Officer*" The attorney who represents the Tribe in all matters related to this Code, including the Indian Child Welfare Act, and acts as the prosecutor in the Tribal Court.

(kk) "*Protective Services*" A program of identifiable and specialized child welfare services which seeks to intervene in cases where families are observed to have problems which have produced visible signs of chemical dependency or substance abuse and the home situation presents actual or potential hazards to the physical or emotional well-being of children. Protective services include the investigation and substantiation of reports of actual or suspected child abuse, removal of children from homes and/or environments which present immediate hazards to such children's physical or emotional well-being, and by reaching out with social services to stabilize family life and to preserve the family unit.

(ll) "*Protective Services Worker*" Any person who performs the duties and responsibilities of protective services.

(mm) "*Review Hearing*" A formal court hearing requiring the presence of all parties, attorneys and caseworkers. At this hearing, the judge will review the case progress and determine if conditions allow the return of a child in placement. Orders for the continuation or addition of services may be issued by the Court.

(nn) "*Termination of Parental Rights Hearing*" A formal hearing requiring all parties, attorneys and caseworkers. In state court hearings, a qualified expert witness under the Indian Child Welfare Act is required. This hearing is held to hear the merits of allegations that parental rights should be terminated. The Court may not terminate parent(s) rights without finding that active remedial efforts were made but were unsuccessful in preventing the breakup of the family and that termination is in the best interests of the child. The Court must also find beyond a reasonable doubt that continued custody of the child by the Indian parent(s) or Custodian(s) is likely to result in serious emotional or physical damage to the child.

(oo) "*Tribe*" The Little River Band of Ottawa Indians.

(pp) "*Tribal Council*" The elected governing body, exercising the legislative powers of the Tribe as set forth in the Tribe's Constitution.

(qq) "*Tribal Lands*" or "*Tribal Reservation*" Lands owned by the Little River Band of Ottawa Indians or any subdivision of the Tribal government; lands owned by the United States of America in Trust for the Little River Band of Ottawa Indians; and Indian Country of the Little River Band of Ottawa Indians as defined in 18 U.S.C. 1151.

(rr) “*Tribal Court*” The Tribal Court of the Little River Band of Ottawa Indians, also known as the Court.

(ss) “*Ward*” A child who has been adjudicated a child-in-need-of-care, over whom the Tribal Court has jurisdiction. A child-in-need-of-care is a temporary ward of the Court until such time as the case is dismissed and jurisdiction terminates. In cases where parental rights are terminated the child becomes a permanent ward of the Tribal Court until such time as a final decree of adoption is entered as provided in Section 23.14 or the child reaches the age of majority and is released from the jurisdiction of the court..

### **SECTION 3 JURISDICTION OF THE COURT**

#### **3.01. General Powers and Procedures in the Court.**

(a) *General Powers.* All proceedings under this code shall be deemed civil in nature. In any proceeding under the Children’s Protection Code, either on motion of a party or on the Court’s own motion, the Court may issue all orders necessary to insure the safety and well-being of children coming within the jurisdiction of the Court. Included within these are the power to issue and enforce subpoenas requiring attendance and testimony of witnesses and production of records, documents or other tangible objects and orders restraining the conduct of any party over whom the Court has obtained jurisdiction.

(b) *Rules of Procedure.* Matters arising under the Children’s Protection Code shall be governed by the rules of procedure for the Tribal Court that are not in conflict with this code.

(c) *Cooperation and Grants.* The Court is authorized to cooperate fully with any federal, Tribal, state or private agency in order to participate in any foster care, shelter care, treatment or training program(s) and to receive grants-in-aid to carry out the purposes of this Code while this authority is subject to the availability of funds as provided by law.

(d) *Social Services.* The Court shall utilize such services as may be furnished by any Tribal, federal or state agency provided that it is economically administered without unnecessary duplication and expense.

(e) *Contracts.* The Court may negotiate with Tribal, federal, or state agencies and/or departments on behalf of the Tribal Council for the care and placement of children before the Court subject to the availability of funds.

#### **3.02. Subject Matter Jurisdiction.** The Court has original jurisdiction of the following proceedings:

- (a) Proceedings in which a child is alleged to be a child-in-need-of-care;
- (b) Proceedings for the termination of parental rights;
- (c) Proceedings for the adoption of a child;
- (d) Proceedings to determine custody of, or to appoint a guardian for, a child;
- (e) Proceedings to determine the parentage of a child coming within the jurisdiction of the court;

#### **3.03. Continuing Jurisdiction of the Court.** Jurisdiction, once exercised by the Court over a proceeding involving a child, is continuing and exclusive unless terminated by the Court in one of the following ways:

(a) The child becomes an adult, except where a child becomes an adult during the pendency of delinquency proceedings, and adoption proceedings, in the Court.

(b) When the Court enters an order terminating its jurisdiction or transferring jurisdiction to another court.

**3.04. *Persons Subject to Jurisdiction of the Court.*** The Court may exercise personal jurisdiction over the following categories of persons:

(a) Any child who is an enrolled member of the Tribe or eligible for enrollment who is under the age of eighteen (18) years;

(b) A child who is an enrolled member of the Tribe or eligible for enrollment in the Tribe who is involved in a child custody proceeding or other proceeding involving a child-in-need-of-care, which is transferred to the Tribal Court pursuant to subsection 3.09;

(c) A non-Indian or non-member child domiciled or residing within the Tribal lands of the Little River Band of Ottawa Indians in the home of an enrolled member of either the Little River Band of Ottawa Indians or any other Indian Tribe.

(d) Any person causing a child to come within the jurisdiction of this code, including parent(s), guardian(s) and custodian(s) of children coming under the jurisdiction of this Court pursuant to paragraph (b) of this subsection 3.05.

(e) Any person residing on Tribal lands of the Little River Band of Ottawa Indians who is pregnant with a native child and abusing alcohol or controlled substances.

**3.05. *Jurisdiction over Extended Family.*** The Court shall have jurisdiction over the extended family residing in the household of a child or the child's parent, guardian, and custodian when that Court deems it appropriate.

**3.06. *Continuing Jurisdiction.*** Once the Court asserts jurisdiction over a person, the Court may retain jurisdiction over that person even if the person leaves the physical boundaries of the reservation.

**3.07. *Substantive and Procedural Law Applicable in Court.***

(a) *Tribal Law Controlling.* Because of the vital interest of the Tribe in its children and those children who may become members of the Tribe, this Code, other ordinances, regulations, public policies, recognized customs and common law of the Tribe shall control in any proceeding involving a child who is a member of the Tribe.

(b) *Use of State Substantive and Procedural Law in the Absence of Applicable Tribal Law.* The substantive law and procedures for the state courts shall not be binding upon the Court except where specifically provided for in this Code. In the absence of promulgated rules of procedure, procedural rules of the State of Michigan may be utilized as a guide. Michigan case law may serve as a guide for the Court but shall not be binding. Any matters not covered by the substantive laws, regulations, customs or common law of the Little River Band of Ottawa Indians, or by applicable federal laws or regulations, may be decided by the Court according to the laws of the State of Michigan.

**3.08. *Transfer of Jurisdiction to Other Courts.*** In any proceedings arising under the Children's Protection Code, the Court may transfer the proceedings to an appropriate state court or another Tribal Court where the state or the other Indian Tribe has a significant interest in the child and the transfer would be in the best interests of the child.

**3.09. *Transfer of Jurisdiction from State Courts to Tribal Court In Accordance With the Indian Child Welfare Act.***

(a) *Receipt of Notice.* The Tribal Presenting Officer (Prosecutor) shall be the agent for service of notice of state court child custody proceedings. The Presenting Officer shall provide copies of the notice to the Binojeeuk Commission and the Family Services Department within three (3) days after receipt of certification of eligibility by the Enrollment Department.

(b) *Intervention.* The Presenting Officer shall file a Notice of Intervention with the state court within five days of receipt of notice upon certification by the Little River Band membership office that the child is a member or is eligible for membership in the Little River Band of Ottawa Indians.. The Presenting Officer shall provide copies of the Intervention and other pleadings in his possession to the Binojeeuk Commission and the Director of Family Services within three (3) days after filing of said Notice of Intervention.

(c) *Investigation and Pre-transfer Report.* The Tribal family services department shall conduct an investigation in collaboration with the state social services agency and shall file a written report, comporting with tribal regulations, with the Presenting Officer and the Binojeeuk Commission no later than forty-eight (48) hours before the next regularly scheduled Binojeeuk Commission meeting. If an emergency meeting is required, an oral report with appropriate documentation may be submitted. However, the written report shall be filed no later than forty-eight (48) hours after the emergency meeting. Such written report shall include the following:

- (i) The best interests of the child;
- (ii) The best interests of the Tribe;
- (iii) Availability of services for the child and the family;
- (iv) Prospects for permanent placement for the child; and
- (v) Conservation of Tribal resources.

(d) *Decision to Request Transfer.* The Binojeeuk Commission shall make written recommendations to the Presenting Officer on whether or not the Tribe should petition for transfer from the state court. The Binojeeuk Commission shall consider these factors:

- (i) The best interests of the child;
- (ii) The best interests of the Tribe;
- (iii) Availability of services for the child and the family;
- (iv) Prospects for permanent placement for the child; and
- (v) Conservation of Tribal resources.

(e) *Petition for Transfer.* The Tribal petition for transfer shall be filed in the state court by the Tribal Prosecutor within five days of receipt of the Binojeeuk Commission's recommendation for transfer. If either parent or the Indian custodian objects to the transfer to Tribal Court, the matter must remain in state court under the terms of the Indian Child Welfare Act.

(f) *Hearings upon Grant of Transfer Request by State Court.* Upon receipt of transfer jurisdiction from state court, the Tribal Court shall hold appropriate hearings in accordance with this code.

## **SECTION 4 COURT PERSONNEL**

**4.01. Counsel for Parent.** Parents may be represented at each stage of proceedings under this act by an attorney or lay advocate at their own expense. It is prudent and advisable for the parents to have representation.

**4.02. Guardian Ad Litem.** The Court shall appoint a guardian ad litem for a child.

**4.03. Presenting Officer.** The Tribal Prosecutor shall act as the Presenting Officer, and the terms shall be interchangeable. The Presenting Officer shall represent the Tribe in all proceedings under this Code and the Indian Child Welfare Act. The Presenting Officer may make recommendations to the Binojeeuk Commission and the Tribal Council regarding needed amendments to this Code. The Presenting Officer may make recommendations to the Court regarding needed amendments or revisions to the procedural rules and approved forms utilized by the Tribal Court. The Presenting



Officer will be responsible for developing the necessary procedures for carrying out the objects of this Code.

## **SECTION 5 BINOJEEUK COMMISSION**

**5.01. *Creation of the Binojeeuk Commission.*** The Binojeeuk Commission is created for the purpose of protecting the best interests of the child and promoting the stability and security of Indian families by fully exercising the Tribe's rights and responsibilities under the Indian Child Welfare Act of 1978 and this Code.

**5.02. *Membership.*** The Binojeeuk Commission shall consist of five (5) adult members of the Tribe who are age 21 or older, appointed by the Tribal Ogema and ratified by the Tribal Council. The term of office for Commission members shall be four (4) years. Commissioners' character must be determined to be in compliance with 25 U.S.C. §3207 which provides that no individual shall be appointed to a position, the duties and responsibilities of which involve regular contact with, or control over, Indian children if such person has been found guilty of, or entered a plea of nolo contendere or guilty to, any felonious offense, or any of two or more misdemeanor offenses, under Federal, State, or Tribal law involving crimes of violence; sexual assault, molestation, exploitation, contact or prostitution; crimes against persons; or offenses committed against children.

**5.03. *Duties.*** The Binojeeuk Commission shall act under the authority expressly delegated to it by the Tribal Council, in this Code or in other enactments by the Tribal Council. The Binojeeuk Commission shall have the following duties:

- (a) Advise the Tribal Council and the Tribal Court on child welfare matters and recommend policies and procedures for implementing federal and Tribal child welfare law.
- (b) Monitor child welfare proceedings involving Tribal members in the state or Tribal Courts.
- (c) Make recommendations regarding intervention in such proceedings and transfer of jurisdiction from state court to the Tribal Court as provided in the Indian Child Welfare Act.
- (d) Conduct informal conferences with a child and the child's parent(s), guardian or custodian to discuss alternatives to formal Court jurisdiction for resolving concerns about the proper care and supervision of a child.
- (e) Make recommendations to authorize the filing of child-in-need-of care petitions in the Tribal Court pursuant to this Code.
- (f) Make recommendations to the Tribal family services workers, placement agency workers and the Tribal Prosecutor regarding the care, custody and supervision of Tribal children under Court jurisdiction, including recommendations as to case plan, guardianship and termination of parental rights.
- (g) License and monitor group, shelter, foster and adoptive homes and child placing agencies.
- (h) Engage in further activities as to protect and improve the welfare of the children of the Little River Band of Ottawa Indians.

**5.04. *Voting.***

- (a) Actions of the Binojeeuk Commission shall be decided by a consensus of those present at the meeting. The Chair is entitled to vote on all matters before the Commission.
- (b) A quorum shall consist of a majority of currently appointed members. Any action by less than a quorum must be ratified by non-attending members before such action shall become official. Ratification may be done by phone, fax or personal contact. All ratifications shall be reduced to writing and placed in the minutes and approved at the next regularly scheduled Commission meeting.

**5.05. Commission Members are not Investigators.** Binojeeuk Commission members shall not initiate their own gathering of information regarding the matter under review. All members shall have access to the same information. If Binojeeuk Commission members are contacted by an interested party, the Commission member shall refer the party to the caseworker, social worker, client advocate or the Little River Band Family Services office as appropriate. The Commission may request that further information be provided or that further investigation be conducted by the social worker or other appropriate authority to facilitate a timely decision by the Binojeeuk Commission.

**5.06. Conflicts of Interest.** Binojeeuk Commission members who are foster parents or child advocates may participate as a Commission member in the review of children who are in their own care but may not participate in voting or in deliberations before voting. A Binojeeuk Commission member may participate in the discussion but not vote on actions involving the Commission member's extended family.

**5.07. Confidentiality.** Meetings of the Binojeeuk Commission shall not be open to the public except for persons authorized to attend by the Binojeeuk Commission. Confidentiality of case information and the Binojeeuk Commission records shall be maintained. Binojeeuk Commission members are subject to the same standards of confidentiality as Court personnel, social service workers and other professionals.

**5.08. Records of Procedures.** Case materials and all other Binojeeuk Commission records shall be kept in a secure area. The Indian Child Welfare Worker shall collect case place packets at the conclusion of Binojeeuk Commission meetings so that no reports leave the meeting and all written reports are maintained in confidence. Written material may be provided to Commission members in advance of the meetings.

## **SECTION 6 CHILD PROTECTION AND MULTIDISCIPLINARY TEAMS**

**6.01 Child Protection Team. (CPT)** The Child Protection Team is technical and advisory in nature and shall serve to promote cooperation, communication, and consistency among Tribal agencies seeking to improve the Tribe's child protection services. Members of the Child Protection Team shall maintain confidentiality as to all information acquired through or at a Child Protection Team meeting. At least annually and on a case by case basis as needed, the Director of the Family Services Department shall convene a CPT meeting with Tribal employees and representatives the Director deems appropriate, which may include the Presenting Officer, Tribal Court officers, Binojeeuk Commissioners, Family Service Department employees, Health Department personnel, such as doctors, nurses and substance abuse therapists or mental health workers; and Tribal law enforcement personnel. The Director may also invite local, state, and federal personnel involved with child protection to participate on the CPT. The Director shall have the discretion to determine which persons may serve on the CPT. The CPT shall collaborate in the development of systems for sharing information and for improving treatment strategies in an effort to fully achieve the purposes of this Code.

**6.02 Multidisciplinary Team (MDT)** In cases involving allegations that may lead to criminal prosecutions, the Presenting Officer, the Director of Family Services, and the Director of Public Safety shall communicate and decide, under appropriate protocol, on whether a case shall be handled under civil and/or criminal process, or whether the case should be referred to the United

States Attorney for Federal prosecution. The team may elect to include other Tribal staff and representatives from State and federal law enforcement and social agencies on the MDT.

## **SECTION 7**

### **PROTECTIVE SERVICES WORKERS**

**7.01. Powers and Duties.** Protective services workers shall be employed by or contracted for by the Tribal Family Services Department. Protective services workers shall:

(a) Receive from any source, oral or written, information regarding a child who may be a child-in-need-of-care.

(b) Upon receipt of any report or information under this paragraph (c) of this section 7.01., shall initiate a prompt and thorough investigation within 24 hours which shall include a determination of the nature, extent and cause of any condition which is contrary to the child's best interests and the name, age and condition of other children in the home.

(c) In conducting its investigation, the protective service worker shall seek the assistance of and cooperate with law enforcement officials within 24 hours after becoming aware that more than one of the following conditions exists:

- (1) Abuse or neglect is the suspected cause of a child's death.
- (2) The child is the victim of suspected sexual abuse or sexual exploitation.
- (3) Abuse or neglect resulting in severe physical, mental or emotional injuries to the child that requires medical treatment or hospitalization. For purposes of this subsection, "severe physical injury" means brain damage, skull or bone fractures, subdural hematoma, dislocations, sprains, internal injuries, poisoning, burns, scalds, severe cuts or any other physical injury that seriously impairs the health or physical well-being of a child.
- (4) Law enforcement intervention is necessary for the protection of the child, the protective services worker or another person involved in the investigation.
- (5) Any alleged perpetrator of the child's injury is not a person responsible for the child's health or welfare.

(d) Take a child into temporary custody if necessary. Law enforcement officials shall cooperate with family services personnel to remove a child from the custody of the parents, guardian or custodian when necessary.

(e) After investigation, assess the risk to the remaining children in the home and all other facts or matters found to be pertinent.

(f) Substantiate whether there is probable cause to believe that the child is a child-in-need-of-care.

(g) Offer appropriate services to the family of any child found to be a child-in-need-of-care.

(h) Within thirty (30) days after a referral of a potential child-in-need-of-care, submit a written report of the investigation and evaluation that shall be included in the files maintained by the Tribal Family Services Department and shall include a determination as to whether the report was substantiated or unsubstantiated.

(i) Upon completion of the investigation by the local law enforcement agency or the protective services worker, the law enforcement agency or protective services worker may inform the person who made the report as to the disposition of the report.

(j) Law enforcement officials shall cooperate with the protective services worker and the Tribal Family Services Department in conducting investigations.

(k) If Protective Services receives a report that alleges a pregnant woman abusing alcohol or a controlled substance, protective services shall arrange an appropriate assessment and offer services

indicated under the circumstances. Services offered may include but are not limited to a referral for chemical dependency assessment, a referral for chemical dependency treatment and a referral for prenatal care. Protective services may also seek court ordered services. Protective services shall seek court ordered treatment if the pregnant woman refuses recommended voluntary services or fails recommended treatment.

**7.02. *Agreements.*** The Family Services Department shall cooperate with such state and community agencies as are necessary to achieve the purposes of this Code. The Family Services Department may negotiate working agreements with other jurisdictions. Such agreements shall be subject to ratification of the Tribal Council.

**7.03. *Limitations of Authority; Duty to Inform.***

(a) Before offering services to a family, a worker shall inform the family that the worker has no legal authority to compel the family to receive such services.

(b) If the family declines the offered services, the worker may request authorization of the Binojeeuk Commission to initiate a child protection petition in Court alleging that the child is a child-in-need-of-care.

(c) Nothing in this section limits the authority of the protective services worker to act in emergency situations to obtain a medical evaluation of the child.

## **SECTION 8 INDIAN CHILD WELFARE CASEWORKER**

**8.01. *Responsibilities of the Indian Child Welfare Caseworker.*** An Indian Child Welfare Caseworker shall serve as the primary tribal case worker assigned by Family Services Department of the Little River Band of Ottawa Indians to monitor families and children involved with the Tribal or State court systems in civil matters. The responsibilities of the Indian Child Welfare Caseworker shall include the responsibility to:

(a) Ascertain the interests of the child, taking into consideration the child's wishes according to the competence and maturity of the child.

(b) Provide a written report of findings and recommendations to the Binojeeuk Commission prior to each hearing held before the Court.

(c) Make recommendations for the interests of the child in mental health, educational, and other community systems when related to the circumstances causing the child to come within the jurisdiction of the Court.

(d) Inform the Court if the services are not being made available to the child and/or family, if the family fails to take advantage of such services or if such services are not achieving their purpose.

(e) Attend training programs as proscribed by Court procedures, the Family Services Director and the Binojeeuk Commission.

(f) Serve as liaison to agencies of the Tribal or state government on behalf of the child and/or family to access services available.

## **SECTION 9 DUTY TO REPORT CHILD ABUSE AND NEGLECT**

**9.01. *Duty to Report.*** Any person who has a reasonable cause to suspect that a child is a child-in-need-of-care shall immediately make a report to the Tribal family services department or the Tribal law enforcement department. Those persons reporting, except those specified in section 9.02 below, may remain anonymous.

**9.02. *Persons Specifically Required to Report.***

(a) All Little River Band elected officials, employees, any physician, nurse, dentist, optometrist or any other medical or mental health professional including a community health representative; volunteers working with families; school principal, school teacher or other school official; social worker; child day care center worker or other child care staff including foster care parents, residential care or institutional personnel; counselor; peace officer or other law enforcement official; member of the Binojeeuk Commission, member of the Multidisciplinary Team; who has reasonable cause to suspect that a child may be a child-in-need-of-care shall make immediately, by phone or otherwise or cause a report to be made of the suspected condition to the Tribal family services department or Tribal law enforcement department.

(b) A person mandated to report shall immediately report to the Tribal family services department if the person knows or has reason to suspect that a woman is pregnant and has abused alcohol or a controlled substance for a non-medical purpose during the pregnancy.

(c) Within forty-eight (48) hours, excluding Saturdays, Sundays, and legal holidays, after making the report, the reporting person mandated to report under this section shall file a written report as required by law.

**9.03. *Anonymous Reports.*** Any person who has a reasonable cause to suspect that a child has been abused, neglected or abandoned shall report the abuse, neglect or abandonment. Those persons reporting, except those already specified, may remain anonymous.

**9.04. *Form of Report.*** Those persons mandated to report shall include the following information in the written report, if known:

(a) Names, addresses and Tribal affiliation of the child and the parents, guardian or custodian.

(b) The child's age.

(c) The nature and content of the child's abuse or neglect.

(d) Previous abuse or neglect of the child or siblings.

(e) The name, age and address of the person alleged to be responsible for the child's abuse or neglect.

(f) The name and address of the person or agency making the report.

**9.05. *Immunity from Liability.*** Any legally recognized privileged communication except that between attorney and client is abrogated and shall neither constitute grounds for excusing a report otherwise required to be made nor for excluding evidence in a civil child protective proceeding resulting from a report made pursuant to this Code.

**9.06. *Penalty for Not Reporting.*** Any person mandated to report who knowingly fails to do so or willfully prevents someone else from doing so shall be subject to a charge of civil contempt with a penalty of up to ninety (90) days in jail and/or a fine of up to \$5,000.00.

**9.07. *Central Registry.*** Reserved.

## **SECTION 10 INVESTIGATION AND EMERGENCY REMOVAL**

**10.01. *Investigative Orders: Orders for Examination.*** Upon a showing by a Protective Services Worker or the Presenting Officer of probable cause that a child is a child-in-need-of-care, which may be done ex parte, the Court may order further investigation and discovery including, but not limited

to, taking of photographs, gathering physical evidence and examinations or evaluation of a child, parent, guardian or custodian conducted by a physician, dentist, psychologist or psychiatrist.

**10.02. Authority to Remove.** Upon application by the Presenting Officer or a Protective Service Worker, which may be ex parte, the Court may order the child taken into custody if the Court finds probable cause to believe the minor is a child-in-need-of-care and that the conditions in which the child is found present a substantial risk of harm to the child's life, physical health or mental well-being. The Court may include in such an order:

- (a) An authorization to enter specified premises to remove the child; AND
- (b) A directive to place the child in protective custody pending preliminary hearing.

**10.03. Emergency Removal without a Court Order.**

(a) A child may be taken into protective custody without a court order by a law enforcement officer or the Tribe's protective services worker if such person has probable cause to believe the child is a child-in-need-of-care; AND

- (1) Failure to remove the child may result in a substantial risk of death, serious injury or serious emotional harm; OR
- (2) The parent, guardian or custodian is absent and it appears from the circumstances that the child is unable to receive the basic necessities of life and no satisfactory arrangements have been made by the parent, guardian or custodian to provide for such necessities and no alternative arrangements except removal are available to protect the child.

(b) If grounds for removal are corrected, the child may be returned to the parent by the person originally authorizing removal or by the protective services worker.

**10.04. Notice of Removal.**

(a) *Notice to the Court.* After a child is removed from the home, the person who removed the child shall contact the presenting officer to permit the filing of the required petition within twenty-four (24) hours, excluding Saturdays, Sundays and legal holidays, after the child is removed from the home. The attempts made to contact the presenting officer shall be documented.

(b) *Notice to the Parent, Guardian or Custodian.* The person removing the child shall make all reasonable efforts to notify the parents, guardian or custodian within twelve (12) hours of the child's removal. Reasonable efforts shall include personal, telephone and written contacts at their residence, place of employment or other location where the parent, guardian or custodian is known to frequent. If the parent, guardian or custodian cannot be found, notice shall be given to members of the extended family of the parent, guardian or custodian and/or the extended family of the child.

(c) *Notice to Child's Tribe if Different from the Tribe Whose Court is Exercising Jurisdiction.* If the Court asserts jurisdiction over a person who is a member of an Indian Tribe or historic band other than the Little River Band, the Court shall notify the Tribal Court of the non-Tribal member that jurisdiction has been asserted. Such notice shall be made the next business day after filing of the petition.

(d) *Notice of Preliminary Hearing.* The parent, guardian, custodian, and Tribe, if applicable, shall be given notice of the preliminary hearing in the manner specified in Section 13 at the same time as soon as the date and time for such hearing is set.

**10.05. Preliminary Hearing Following Emergency Removal.** In all cases of emergency removal, a petition must be filed and a preliminary hearing must be held in the Court within 48 hours, excluding Saturdays, Sundays and legal holidays, after a child has been removed from the home unless such hearing is adjourned for good cause, or the child must be released. Such hearings may be held before

a judge or magistrate of the Court and must comply with the requirements set forth in Section 15 of this Code.

## **SECTION 11 FILING CHILD PROTECTION PETITION**

### **11.01. *Authorization to File Petition.***

(a) Upon the request by the Binojeeuk Commission, a child protective services worker or the Indian Child Welfare worker, the Presenting Officer shall conduct a preliminary inquiry to determine if formal child protection proceedings should be initiated by filing a child protection petition on behalf of the Tribe and in the best interests of the child.

(b) Any person may file a complaint with the Binojeeuk Commission, Indian Child Welfare Worker, a protective services worker, Presenting Officer, law enforcement or the Court alleging that a child is in need of care.

(c) After completion of the preliminary inquiry on a petition, the Binojeeuk Commission or the Presenting Officer shall either authorize the filing of a petition or decline to authorize the filing of a petition.

(d) If a child has been removed and placed in detention or custody, and filing the petition is not authorized by either the Binojeeuk Commission or the Presenting Officer, the petition shall be dismissed and the child immediately released to his/her parent, custodian or guardian.

(e) Only the Presenting Officer may file a petition alleging that a child is in need of care. The Presenting Officer shall file any petition that is authorized by the Binojeeuk Commission.

(f) Nothing in this section shall preclude law enforcement or protective services personnel from taking emergency actions authorized under Section 10 of this Code.

**11.02. *Time Limitations.*** If a child has been removed from the home, then a child protection petition shall be filed with the Court within forty-eight (48) hours, excluding Saturdays, Sundays and legal holidays, or the child must be returned to his/her home.

**11.03. *Contents of Petition.*** The child protection petition shall set forth the following with specificity:

- (a) The name, birth date, sex, residence and Tribal affiliation of the child;
- (b) The basis for the Court's jurisdiction;
- (c) The specific allegations which cause the child to be a child-in-need-of-care;
- (d) A plain and concise statement of the facts upon which the allegations of child-in-need-of-care are based, including the date, time and location at which the alleged facts occurred;
- (e) The names, residence and Tribal affiliation of the child's parents, guardians or custodians, if known;
- (f) The names, relationships and residences of all known members of the child's extended family and all former caregivers, if known. If the identity, residence or location of any parent, guardian, or custodian is unknown, the name, relationship and address of any known adult relative(s) residing in the same city or county as the child;
- (g) If the child is placed outside of the home, where the child is placed, the facts necessitating the placement and the date and time of the placement, unless the Presenting Officer determines that disclosure of the child's location will expose the child to a substantial risk of emotional or physical harm;
- (h) The name of the Presenting Officer presenting the petition and the date and time presented;

- (i) If any matters required to be set forth by the section are not known, a statement that they are not known should be made; and
- (j) The type of relief requested, including whether temporary or permanent custody is sought.

#### **11.04. *Filing and Dismissal of Petition.***

- (a) The petition shall be filed with the Clerk of the Court.
- (b) A petition alleging that a child is in need of care or supervision shall be dismissed with prejudice if a preliminary hearing is not held within:
  - (1) Seventy-two (72) hours, excluding Saturdays, Sundays and legal holidays, from the date of the petition is filed when a child is taken into custody; or
  - (2) Twenty (20) days from the date the petition is filed when a child is not in custody or has been released to his/her parent, custodian or guardian.
- (c) Notwithstanding the time limitations specified in paragraph (b), above, the time for holding the preliminary hearing may be continued upon motion of the Presenting Officer if the custodial parent, guardian or custodian or other material evidence and/or witnesses are unavailable. The motion must include information regarding the nature of the material evidence presently unavailable and/or the names and addresses of unavailable persons or other witnesses. A continuance will be granted only upon a showing by the Presenting Officer that he/she has exercised due diligence in his/her attempt to secure the evidence and/or attendance of witnesses. If a proper showing of due diligence is not made, and the preliminary hearing is not held within the time period required in paragraph (b), the petition must be dismissed with prejudice, unless the parties have agreed to an Informal Adjustment Conference. If a continuance is granted, the preliminary hearing must be held within ten (10) days from the date the petition was filed, if the child was taken into custody, or within twenty (20) days, if a child is not in custody.

## **SECTION 12 NOTICE AND SERVICE OF SUMMONS**

**12.01. *General.*** Unless a party must be summoned as provided in sub-section 13.02, a party may be given notice of a proceeding in the Court in any manner authorized by this Children's Protection Code.

**12.02. *Summons.*** Except as otherwise provided in this Code, the Court shall direct the service of a summons in all proceedings. The summons shall be issued and served on the parent or person with whom the child resides, if other than a court ordered custodian, directing such person to appear for trial or other proceeding. If the person notified is not a parent, the parent(s) shall be notified by service as provided in subsection 13.04. The Court may direct that the child's appearance in court is necessary.

**12.03. *Contents.*** The summons shall direct the person to whom it is addressed to appear with the child, unless the child's appearance has been excused, at a time and place specified by the Court and must:

- (a) Identify the nature of the proceeding; AND
- (b) Include a prominent notice that the proceedings could result in termination of parental rights; AND
- (c) Have a copy of the petition attached to the summons; AND
- (d) Explain that the person has a right to an attorney at his/her own expense and a right to a trial.



#### **12.04. Notice of Hearing.**

(a) *Persons entitled to notice.* The Court shall insure that the following persons are notified of each hearing:

- (1) The parent(s);
- (2) The attorney for the parent(s);
- (3) The child or the advocate for the child;
- (4) The legal guardian or custodian other than the parent(s), if any;
- (5) The petitioner;
- (6) The responsible child placing agency, if different from the petitioner;
- (7) The guardian ad litem of a party appointed;
- (8) The child's Tribe, if different from the petitioner;
- (9) Any other person the court may direct to be notified.

(b) *General.* Notice of hearing must be given in writing or in court on the record at least fourteen (14) days prior to the hearing except as provided in subsections (c) and (d), or as otherwise provided in this Code.

(c) *Preliminary Hearing; Emergency Removal.* When a child is removed from the home, reasonable efforts shall be made to notify the parents of the child or extended family of the preliminary hearing following emergency removal as soon as the hearing is scheduled and the notice may be in person, in writing, or by telephone.

(d) *Permanency Planning Hearing; Termination proceedings.* Notice of a permanency planning hearing or a hearing on a petition to terminate parental rights must be given in writing or on the record at least thirty (30) before the hearing.

(e) When a party fails to appear in response to a notice of hearing, the Court may order the party's appearance by summons or subpoena.

### **SECTION 13 PLACEMENT OF CHILDREN**

**13.01. Restrictions.** A child alleged to be a child-in-need-of-care shall not be placed in a jail or other facility intended or used for the incarceration of adults charged with criminal offenses or for the detention of children alleged to be juvenile offenders.

**13.02. Placement Priorities.** A child may be placed in the following community based shelter-care facilities listed in order of preference:

- (a) Members of the child's immediate family; or
- (b) Members of the child's extended family, who are members of the Little River Band of Ottawa, Grand River Bands of Ottawa, or other Michigan Ottawa, Chippewa or Potawatomi Tribe; or
- (c) Other members of the child's extended family; or
- (d) An Indian family of the Little River Band of Ottawa Indians which is licensed by the State or a Tribe as a foster care home or an Indian family otherwise authorized by law to provide care for the child; or
- (e) A facility operated by a licensed Indian child welfare services agency; or
- (f) Any other suitable placement which meets the standards for shelter care facilities established by the Tribal government.

**13.03. Perpetrator in the Child's Home.** If the alleged perpetrator is known and the perpetrator resides in the home of the victim(s), the Court may order such perpetrator ~~may be~~ removed from the

home and the child may remain under the care and supervision of the Little River Band Family Services Department.

**13.03. *Least Restrictive Setting.*** If a child cannot be returned to the parents, the child shall be placed in the least restrictive setting which most approximates a family and in which the special needs, if any, may be met. Consistent with the placement priorities described above, efforts shall be made to place the child in a home or facility in reasonable proximity to his/her home, taking into account any special needs of the child.

## **SECTION 14 PRELIMINARY HEARING**

### **14.01. *Time Period within Which Preliminary Hearing Must be Held.***

(a) *Child Released to Parent, Guardian or Custodian; Hearing Date.* If the child was not removed from the home or has been released to the parent(s), guardian or custodian, the Court shall conduct a preliminary hearing within twenty (20) days after filing of the petition.

(b) *Child Taken Into Custody for Out-of-home Placement; Hearing Date.* If the child is taken into custody and placed in out of home placement, the Court shall conduct a preliminary hearing within seventy-two (72) hours after filing the petition, excluding Saturdays, Sundays and legal holidays.

(c) *Preliminary Hearing Adjourned During Informal Adjustment.* If, after the filing of a petition, the parties and Binojeeuk Commission agree to informal adjustment provided for in Section 11 of this Code, the petition may be held in abeyance and the preliminary hearing adjourned until the informal adjustment proceedings conclude or the petition is dismissed.

### **14.02. *Preliminary Hearing Procedures.***

(a) *Purpose.* At the Preliminary Hearing, the Court must determine:

- (1) Whether the parent(s), guardian or custodian of the child has been notified of the hearing; AND
- (ii) Whether probable cause exists to believe the child is a child-in-need-of-care; AND
- (2) Whether the home conditions continue to present a substantial risk of harm to the child's life, physical health, emotional health or mental well-being and whether any alternative except removal of the child is reasonably available to adequately safeguard the child from such risk.

(b) *If Parent, Guardian or Custodian is not present.* The Court shall determine if the child's parent, guardian or custodian has been notified of the hearing in accordance with Section 13 of this Code and, if the parent is not present, the Court shall make an inquiry into what efforts have been made to notify and to obtain the presence of the parent, guardian or custodian. If it appears that further efforts are likely to produce the child's parent, guardian or custodian, the Court shall recess for not more than seventy-two (72) hours, excluding Saturdays, Sundays and legal holidays, and direct the petitioner to make continued efforts to obtain the presence of the child's parent, guardian or custodian. The preliminary hearing may be conducted in the parent's absence.

(c) *Parents' Advised of Allegations and Procedural Rights.* The Court shall read the allegations in the petition in open court, unless waived, and shall advise the parent of the right to have counsel represent them at their own expense and their right to a trial on the allegations in the petition. After advising the parent of the right to remain silent, the Court shall allow a statement of explanation.

(d) *Court Testimony.* The Court shall hear testimony concerning:

- (1) The circumstances that gave rise to the petition; AND
- (2) The need for continued placement.

(e) *Plea of Admission or No Contest.* A respondent may make a plea of admission or of no contest to the allegations contained in the petition, including an amended petition, which would establish that the child is a child-in-need-of-care. The plea may be taken at any time after the filing of the petition provided that the petitioner and guardian ad litem or special advocate for the child have been notified of a plea offer and have been given the opportunity to object before the plea is accepted. Before accepting a plea of admission or plea of no contest, the court must advise the respondent on the record or in writing that the following is made a part of the record:

- (1) the allegations in the petition;
- (2) the right to an attorney at the respondent's expense;
- (3) that if the court accepts the plea, the respondent will give up rights to: a trial by judge, to have the petitioner prove the truth of allegations by a preponderance of the evidence, to have witnesses against him/her appear and testify under oath, to cross-examine witnesses against him/her, and have witnesses which might support his/her defense be subpoenaed to testify in court; and
- (4) the consequences of the plea including that the plea could later be used to terminate parental rights.

The court shall not accept a plea of admission or of no contest until it satisfies itself that the allegations contained in the petition are supported and that the plea is knowingly, understandingly, and voluntarily made. Following acceptance and entry of a plea of admission or no contest, the Court may follow the procedures defined in paragraph (f)(ii)(B) or (C) of this subsection and may schedule a disposition hearing in accordance with Section 17 of this Code.

(f) At the Preliminary Hearing, the Court shall decide whether to authorize the filing of the petition.

- (1) *No Probable Cause.* If, at the end of the preliminary hearing, probable cause to believe the child is a child-in-need-of-care is not found, the petition shall be dismissed and the child shall be released.

- (2) *Probable Cause.* If the Court finds that probable cause exists to believe the child is a child-in-need-of-care the Court:

- (i) Shall order the parent, guardian or custodian to appear at an adjudication hearing on a date and time set by the Court; AND

- (ii) May release the child to the custody of either of the child's parents, guardian or custodian under such reasonable terms and conditions as are necessary for either the physical, emotional or mental well-being of the child; OR

- (iii) May order placement of the child with someone other than a parent, guardian or custodian if the Court, after hearing, determines that both of the following conditions exist:

- (A) Custody of the child with a parent, guardian or custodian presents a substantial risk of harm to the child's life, physical health, emotional or mental well-being and no provision of services or other arrangement except removal of the child is reasonably available to adequately safeguard the child from such risk.

- (B) Conditions of custody of the child away from a parent, guardian or custodian are adequate to safeguard the child's health and welfare.

(g) *Physical, Mental or Psychological Exam.* The Court may at any time after conducting a preliminary hearing at which probable cause to proceed upon a petition is found, order any involved child, parent or guardian to undergo a physical, mental or psychological examination by a qualified

professional.

## **SECTION 15 ADJUDICATION HEARING**

**15.01. Hearing.** The Adjudication Hearing shall commence as soon as possible but not later than forty-five (45) days after the preliminary hearing.

**15.02. Continuances.** Continuances of an Adjudication Hearing may be granted by the Court but only:

- (a) Upon stipulation of the parties; or
- (b) Where process cannot be completed; or
- (c) The Court finds that the testimony of a presently unavailable witness is needed; or
- (d) One time only for up to fourteen (14) days at a parent's request for parents to obtain counsel; OR
- (e) *Adjudication Hearing Adjourned During Informal Adjustment.* If, after the filing of a petition, the parties and Binojeeuk Commission agree to informal adjustment provided for in Section 11 of this Code, the proceedings on the petition may be held in abeyance and the adjudication hearing adjourned until the informal adjustment proceedings conclude or the petition is dismissed.
- (e) For other good cause shown.

**15.03. Hearings Closed to the Public.** The general public shall be excluded from the proceedings and only the parties, their counsel, witnesses, the child advocate and other persons determined necessary or useful to the proceedings by the Court shall be admitted.

**15.04. Evidence.**

- (a) The formal rules of evidence shall not apply at these proceedings. All relevant and material evidence which is reliable and trustworthy may be admitted at the trial and may be relied upon by the Court to the extent of its probative value.
- (b) The parties shall be afforded an opportunity to examine and controvert written reports received by the Court and shall be allowed to cross-examine individuals who made the reports when those individuals are reasonably available.
- (c) The Court may rely upon conference telephone or other electronic devices that permit all those appearing or participating to hear and speak to each other.

**15.05. Allegations Sustained.** If the allegations of the petition are sustained by clear and convincing evidence, the Court shall find the child to be a child-in-need-of-care and schedule a Disposition Hearing in accordance with Section 17 of this Code. The Court may also enter orders of further discovery, evaluation and assessment and other orders to protect the child.

**15.06. Allegations not Sustained.** If the allegations of the petition are not sustained, the Court shall dismiss the matter and release the minor.

## **SECTION 16 DISPOSITION HEARING**

**16.01. Date.** The Disposition Hearing may be held immediately after the Adjudication Hearing. The interval, if any, between the Adjudication Hearing and the Disposition Hearing is within the discretion of the Court. When the child is in placement, the interval may not be more than thirty-five

(35) days except for good cause. If the Disposition Hearing is not held immediately after the Adjudication Hearing, notice of hearing may be given by scheduling it on the record in the presence of the parties and in accordance with Notice and Service of Summons.

#### **16.02. *Proposed Case Plan.***

(a) The Little River Band Family Services Department shall prepare a written report describing all reasonable and appropriate alternative dispositions. The report shall contain a specific plan for the care of and assistance to the minor and/or the minor's parent(s), guardian or custodian designed to resolve the problems presented in the petition.

(b) The report shall contain a detailed explanation of the necessity for the proposed disposition plan and its benefits to the minor.

(c) If the report recommends placement of the child somewhere other than with the child's parent(s), guardian or custodian, it shall state the specific reasons underlying its placement recommendation, including any reason(s) for deviating from the placement priorities defined in Section 14 of this Code.

(d) The Little River Band Family Services Department shall present the case plan to the Binojeeuk Commission for its adoption, modification or rejection at a scheduled Commission meeting prior to the dispositional hearing. Case plan material shall be delivered to the Binojeeuk Commissioners five (5) days prior to the Binojeeuk Commission meeting.

#### **16.03. *Evidence.***

(a) All relevant and material evidence, including oral and written reports may be received and may be relied on to the extent of its probative value, even though such evidence may not be admissible at trial. The Court shall consider the case service plan and any report by any agency responsible for the care and supervision of the child concerning efforts to provide remedial services and rehabilitation programs to prevent removal or to rectify conditions that caused removal of this minor from the home.

(b) The parties shall be given an opportunity to examine and controvert written reports so received and may be allowed to cross-examine individuals making reports when such individuals are reasonably available.

(c) No assertion of an evidentiary privilege other than the privilege between attorney and client shall prevent the receipt and use at the Disposition phase of materials prepared pursuant to a court ordered examination, interview or course of treatment.

#### **16.04. *Disposition Orders.***

(a) The Court shall enter an order of disposition after considering the case service plan and other evidence offered at Disposition. The Court shall approve a case service plan and may enter such orders as it considers necessary in the interest of the child. The order of disposition shall state whether active efforts have been made to prevent the child's removal from the home or to rectify the conditions that caused the child's removal from the home.

(b) If a child has been found to be a child-in-need-of-care, the Court may make the following dispositions, consistent with the placement preferences described in Section 14:

(1) Permit the child to remain with the parent(s), guardian or custodian, subject to such conditions as the Court may prescribe;

(2) Place the child with a relative subject to such conditions as the Court may prescribe;

(3) Place the child in a licensed foster home subject to such conditions as the Court may prescribe;

(4) Place the child in group home or residential care facility designated by the Court;

(5) Direct the presenting officer to file a petition to terminate parental rights under this Code.

(c) If a child remains under the jurisdiction of the Court, an order may be amended or supplemented within the authority granted to the Court in this Code at any time as the Court considers necessary.

## **SECTION 17**

### **DISPOSITION REVIEW HEARING**

**17.01. Review.** The Disposition Order is to be reviewed at the discretion of the Court but at least once every six (6) months.

**17.02. Notice.** Notice of the review hearing shall be provided on the record and by ordinary mail as provided in this Code.

**17.03. Matters Subject to Review.** At a review hearing the Court shall review on the record the compliance with the case service plan prepared and the previous orders of the Court including:

(a) Services provided or offered to the child and the parent(s), guardian or custodian and whether the parent(s), guardian or custodian has complied with and benefited from those services.

(b) *Visitation with the child.* If visitation did not occur or was infrequent, the Court shall determine why visitation did not occur or was infrequent.

**17.04. Action Following Review.** After review of the case service plan, the Court shall determine the extent of progress made toward alleviating or mitigating the conditions that caused the child to become and to remain a child-in-need-of-care. The Court may modify any part of the case plan including but not limited to the following:

(a) Prescribing additional services that are necessary to rectify the conditions that caused the child to become or to remain a child-in-need-of-care.

(b) Prescribing additional actions to be taken by the parent(s), guardian or custodian to rectify the conditions that caused the child to become or remain a child-in-need-of-care.

(c) *Return the Child Home.* Issue an order permitting the agency to return the child to the home if no fewer than seven (7) days notice of the intent to return the child to the home is given to all parties and no party requests a hearing within the seven (7) days.

**17.05. Continuing Placement/Additional Review.** At a review hearing, the Court shall determine the continuing necessity and appropriateness of the child's placement and shall order the return of the child to the custody of the parent(s), continue the disposition order, modify the disposition order or enter a new disposition order. If the child remains in placement, the Court shall determine at the disposition hearing and at each review hearing whether the cause should be reviewed before the next review hearing required under this section. In making this determination, the Court shall consider, but not be limited to, all of the following:

(a) The parent's ability and motivation to make necessary changes to provide a suitable environment for the child.

(b) Whether there is a reasonable likelihood that the child may be returned to the home prior to the next review hearing required by this section.

(c) Whether a placement which better meets the placement priorities described in Section 14 of this Code is available and in the best interests of the child.

**17.06. Agency Report.** An agency report filed with the Court shall be accessible to all parties to the action and shall be offered into evidence.

## **SECTION 18 PERMANENCY PLANNING HEARING**

**18.01. Hearing.** If a child remains adjudicated a child-in-need-of-care and parental rights to the child have not been terminated, the Court shall conduct a permanency planning hearing not more than twelve (12) months after entry of the order of disposition and every six (6) months thereafter, so long as the child remains a child-in-need-of-care. A permanency planning hearing may be combined with a disposition hearing under this Code.

**18.02. Review the Status.** A permanency planning hearing shall be conducted to review the status of the child and the progress being made toward reunification. If the Court determines that the child shall not be returned to the parent(s), the Court shall order permanent placement with a relative, long term or residential care.

**18.03. Return the Child Home.** If parental rights to the child have not been terminated and the Court determines at a permanency planning hearing that the return of the child would not cause a substantial risk of harm to the child's life, physical health or mental well-being, the Court shall order the child returned to the parent(s). In determining whether the return of the child would cause a substantial risk of harm to the child, the Court shall view the failure of the parent(s) to substantially comply with the terms and conditions of the case service plan and disposition orders of the Court as evidence that return of the child to the parent(s) would cause a substantial risk of harm to the child's life, physical health or mental well-being.

**18.04. Child not Returned Home; Alternative Permanent Placement Plans.** If the Court determines at a permanency planning hearing that the child should not be returned to the parent(s), the Tribal family services shall propose, with the recommendation of the Binojeeuk Commission, one of the following alternative permanent placement plans consistent with the placement preferences and in the least restrictive setting, as defined in Section 13 of this Code.

**19.05. Court Orders.** If the Court determines that the child should not be returned to the parent(s), the Court shall order permanent placement with a relative, long term foster or residential care.

## **SECTION 19 TERMINATION OF PARENTAL RIGHTS**

**19.01. Grounds for Involuntary Termination.** The Court may terminate the parental rights of a parent to a child adjudicated a child-in-need-of-care if the Court finds by evidence beyond a reasonable doubt that remedial services, rehabilitative programs and active efforts have been provided to prevent the break up of the Indian family and that despite such efforts, one or more of the following conditions exists:

- (a) The child has been abandoned by his/her parent(s).
- (b) The child or a sibling of the child has suffered physical injury or physical or sexual abuse under either of the following circumstances:
  - (i) A parent's act caused the physical injury or physical or sexual abuse and the Court finds that there is a reasonable likelihood that the child will suffer from injury or abuse in the foreseeable future if placed in the parent's home;

(ii) A parent who had the opportunity to prevent the physical injury or physical or sexual abuse failed to do so and the Court finds that there is a reasonable likelihood that the child will suffer injury or abuse in the foreseeable future if placed in the parent's home.

(c) The parent was a respondent in a proceeding brought under this Children's Protection Code, twelve (12) or more months have elapsed since the issuance of an initial disposition order and the Court by evidence beyond a reasonable doubt finds either of the following;

- (1) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the age of the child;
- (2) Other conditions exist that cause the child to be a child-in-need-of-care. The parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice and have been given a reasonable opportunity to rectify the conditions and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the age of the child.

(d) The parent without regard to intent fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the age of the child.

(e) The parent of the child is convicted of a felony of a nature as to prove the unfitness of the parent to have future custody of the child or if the parent is imprisoned over two years and the parent has not provided for the child's proper care and custody and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the age of the child.

(f) Parental rights to one (1) or more siblings of the child have been terminated due to serious and chronic neglect or physical or sexual abuse and prior attempts to rehabilitate the parents have been unsuccessful.

THE COURT MUST ALSO FIND BEYOND A REASONABLE DOUBT THAT CONTINUED CUSTODY OF THE CHILD BY THE PARENT IS LIKELY TO RESULT IN SERIOUS EMOTIONAL OR PHYSICAL DAMAGE TO THE CHILD AND THAT IT IS IN THE BEST INTERESTS OF THE CHILD TO TERMINATE THE RIGHTS OF THE PARENT.

**19.02. Termination at Initial Disposition.** If a petition to terminate parental rights to a child is filed, the Court may enter an order terminating parental rights at the initial disposition hearing; however, the Court may not enter an order terminating parental rights at the initial disposition hearing if the parents(s) have not been afforded at least thirty (30) days notice before such hearing as provided in Section 13.

**19.03. Quality of Evidence.** The same rules of evidence that apply at adjudication shall apply in termination of parental rights proceedings.

**19.04. Order.** An order terminating parental rights under this Code may not be entered unless the Court makes findings of fact, states its conclusions of law and includes that statutory basis for the order. The Court may state the findings and conclusions on the record and, in all cases, shall include them in a written opinion. If the Court does not issue a decision on the record following the hearing, it shall file its decision within twenty-eight (28) days after the taking of final reports.



**19.05. Voluntary Relinquishment of Parental Rights.** Parental rights may be voluntarily terminated by a parent in writing, if signed by the parent in the presence of and with the approval of the Court. Any consent given prior to, or within 10 days after, the birth of the child shall not be valid. The Court shall ensure that the parent understands the consequences of the voluntary termination prior to approving it. A parent who wishes to relinquish parental rights shall be provided an interpreter if the parent does not understand English.

Consent may be withdrawn prior to the entry of the final order.

**19.06. Child's Continued Right to Benefits.** An order terminating the parent-child relationship shall not entitle a child to any benefit due the child from any third person, agencies, state or the United States nor shall any action under this Code be deemed to affect any rights and benefits that the child derives from the child's descent from a member of a federally recognized Tribe.

**19.07. Advise of Right to Appeal.** Immediately upon entry of an order terminating parental rights, the Court shall advise the respondent parent orally or in writing that the parent is entitled to appellate review of the order. Appellate review shall be by right. The clearly erroneous standard shall be used in reviewing the findings of the Court on appeal from an order terminating parental rights.

**19.08. Post Termination Review Hearing.** If a child remains a ward of the Court following the termination of parental rights to the child, the Court shall conduct a review hearing at least every six (6) months to review the progress toward permanent placement of the child. The Court shall make findings on whether active efforts have been made to establish permanent placement for the child and may enter such orders as it considers necessary in the best interests of the child.

## **SECTION 20 CHILD PROTECTION RECORDS**

**20.01. Court Records.** A record of all hearings under this Code shall be made and preserved. All Court records shall be confidential and shall not be open to inspection to any but the following:

- (a) The child;
- (b) The child's parent(s), guardian or custodian;
- (c) The prospective adoptive parent(s);
- (d) The child's counsel or court appointed special advocate;
- (e) The Binojeeuk Commission;
- (f) The Presenting Officer;
- (g) Any other person by order of the Court having legitimate interest in the particular case or the work of the Court.

**20.02. Law Enforcement and Social Services Records.** Law enforcement records and files concerning a child shall be kept separate from the records and files of adults. All law enforcement and family service records shall be confidential and shall not be open to inspection to any but the following:

- (a) The child;
- (b) The child's parent(s), guardian or custodian;
- (c) The child's counsel or court appointed special advocate;
- (d) Law enforcement personnel;
- (e) The Binojeeuk Commission;
- (f) The Presenting Officer;

(g) Any other person by order of the Court having legitimate interest in the particular case or the work of the Court.

## **SECTION 21**

### **DELEGATIONS OF PARENTAL AUTHORITY/GUARDIANSHIP**

**21.01. *Power of Attorney.*** A parent(s), guardian or custodian may delegate to another person, the powers of a parent regarding the care, custody and property of a minor child. Such powers include but are not limited to the following: the consent of admission to a hospital or school, consent to routine dental care, non-surgical medical care and emergency dental, medical or surgical care. The delegation shall be valid for a period not to exceed six (6) months from the date of execution and may be revoked in writing at any time by the person or agency delegating the power. The delegation of power does not include the power to consent to marriage or adoption of a child and the power to release a child for adoption.

**21.02. *Types of Guardianship.***

(a) *Temporary Guardianship.* The Court may appoint a temporary guardian under such terms and conditions as the Court sets forth in the written order. A temporary guardianship may be terminated if the Court determines that it is in the best interests of the child to change custody from temporary guardian to a new guardian or to return the child to the parent, guardian or custodian. A temporary guardianship shall be established by parental consent only and shall be revocable by the Court upon parental request. The parent and the child's extended family shall be granted liberal visitation rights unless deemed inappropriate by the Court.

(b) *Full Guardianship.* The Court, when it appears necessary or convenient, may appoint guardians for the persons under the Court's jurisdiction. Unless otherwise specified by the Court, a guardian appointed shall be responsible for the care, custody and education of the child until the child reaches the age of 18 years, dies, is emancipated by the Court, or until the guardian is legally discharged. Unless the Court appoints a separate individual as guardian of property the guardian of person shall also be the guardian of the child's property.

**21.03. *Grounds.*** The Court may appoint a guardian for a child if either of the following circumstances exists:

(a) The parental rights of both parents or of the surviving parent have been terminated or suspended by prior court order, by judgment of divorce or separate maintenance, by death, by judicial determination of mental incompetence, by disappearance or by confinement in a place of detention.

(b) The appointment is necessary for the immediate physical well-being of the minor.

**21.04. *Who May File.*** Any person interested in the welfare of the child may file a petition for guardianship. The petition may be initiated either by the proposed guardian or by the child if the child is at least fourteen (14) years of age.

**21.05. *Notice of Guardianship Proceedings.*** Before appointing a guardian, the Court must give reasonable notice to any person having the care of the child, to the child and to other relatives of the child as the Court may deem proper.

**21.06. *Contents of Guardianship Petition.***

(a) The petition for guardianship shall include the following, to the best information and belief of the petitioner:

- (1) The full name, sex, date and place of birth, residence and Tribal affiliation of the proposed ward;
- (2) The full name, address, Tribal affiliation, relationship if any to the minor and interest in the proceeding of the petitioner;
- (3) The names and addresses of the minor's parents, if living and of other persons known to have an interest in the petition for appointment of guardian; the name and date of death of the minor's deceased parent or parents;
- (4) The basis for the Court's jurisdiction;
- (5) The name and address of the person or agency having legal or temporary custody of the proposed ward;
- (6) A statement of the reason or reasons that the appointment of a guardian is sought; whether the petitioner seeks the appointment of a guardian of the person, a guardian of the estate or both; and whom the petitioner recommends or seeks to have appointed as such guardian or guardians and
- (7) A full description and statement of value of the minor's assets and liabilities with an estimate of the value of any property owned, possessed, or in which the proposed ward has an interest, including any income and receivables to which the proposed ward is entitled.

(b) All petitions must be written and dated by the petitioners and must be notarized or witnessed by a clerk of the Court.

#### **21.07. Guardianship Report.**

(a) Upon the filing of a guardianship petition, the Court shall immediately request that the family services department or other qualified agency conduct a guardianship report on the proposed guardian and report on the proposed ward. The guardianship report shall contain all pertinent information necessary to assist the Court in determining the best interests of the proposed ward.

(b) No determination can be made on a petition for guardianship until the report has been completed and submitted to and considered by the Court. The guardianship report shall be submitted to the Court no later than ten (10) days before the hearing. The Court may order additional reports as it deems necessary.

**21.08. Powers and Duties.** To the extent that it is not inconsistent with the terms of any order of the Court, a guardian of the person has the following powers and duties:

(a) The guardian of the person is entitled to custody of the person of the ward and shall make provisions for the ward's care, comfort and maintenance and shall as appropriate to the ward's needs, arrange for the training, education, employment, rehabilitation or habitation. The guardian of the person shall take reasonable care of the ward's clothing, furniture, vehicles and other personal effects that are with the ward.

(b) In arranging for a domicile other than in the home of the guardian, the guardian of the person shall give preference to places within the Tribal reservation over places not in the reservation, if both in-reservation and out-of-reservation places are substantially equivalent. The guardian also shall give preference to places that are not treatment facilities. If the only available and appropriate places of domicile are treatment facilities, the guardian shall give preference to Tribal-based treatment facilities, such as group homes, over treatment facilities that are not Tribal-based.

(c) The guardian of the person shall have authority to consent to any medical, legal, psychological or other professional care, counsel, treatment or service for the person. The guardian of the person may give any other consent or approval on the ward's behalf that may be required or in the ward's best interest. The guardian of the person may petition the Court for concurrence in the consent or approval.

**21.09. Reimbursement of Guardian.** A guardian of the person is entitled to be reimbursed out of the ward's estate for reasonable and proper expenditures incurred in the performance of the duties as guardian of the ward's person. The Court may order monthly reimbursement payments to the person or agency to whom custody is granted under this Code, provided sufficient funds have been appropriated by the Tribal Council. Such payments must be used by the person or agency with custody of the child for the sole purpose of covering expenses incurred in the care and custody of said child and shall not be used for any other purpose. The use of such payments for any purpose other than that described in this Code shall subject the guardian to contempt of court and any criminal and civil penalties or remedies provided by the Tribal Code.

**21.10. Limitation of Guardian's Liability.** A guardian of the person, if the guardian has acted within the limits imposed by this Code or the order of appointment or both, shall not be liable for damages to the ward or the ward's estate, merely by reason of the guardian's:

(a) Authorizing or giving consent or approval necessary to enable the ward to receive legal, psychological or other professional care, counsel, treatment or service in a situation where the damages result from the negligence or other acts of a third person; or

(b) Authorizing medical treatment or surgery for the ward, if the guardian acted in good faith and was not negligent.

**21.11. Guardianship of Property.**

(a) The Court may appoint a guardian for the property of a ward under such terms and conditions as the Court sets forth in the written order. The guardianship may cover all property or it may be limited to only specific property or a specific legal action as set forth in the written order. A limited guardianship of the person may also include guardianship of the ward's property if set forth in the written order.

(b) *Duties.* A guardian of property shall not have authority over the person but shall be responsible for acting in a reasonable and prudent manner to collect, preserve, manage and use of the child's estate to accomplish the desired result of administering the child's property legally and in the child's best interest, including but not limited to the following specific powers:

- (1) To take possession, for the child's use, of all the child's estate;
- (2) To receive assets due the child from any source;
- (3) To maintain any appropriate action or proceeding to obtain support to which the child is legally entitled, to recover possession of any of the child's property, to determine the title or to recover damages for any injury done to any of the child's property; also, to compromise, adjust, arbitrate, sue on or defend, abandon or otherwise deal with and settle any other claims in favor or against the child;
- (4) To pay taxes, assessments and other expenses incident to the collection, care, administration and protection of the child's estate;
- (5) To expend estate income on the child's behalf and to petition the Court for prior approval of expenditures from estate principal; provided neither the existence of the estate or guardian's authority to make expenditures shall be construed as affecting the legal duty that a parent or other person may have to support and provide for the child; and
- (6) To borrow money for such periods of time and upon such terms and conditions as to rates, maturities, renewals and security as the guardian shall deem advisable, including the power of a corporate guardian to borrow from its own banking department, for the purpose of paying debts, taxes and other claims against the child and to mortgage, pledge or otherwise encumber such portion of the child's estate as may be required to secure such loan(s).

### **21.12. Annual Reports and Review Hearings.**

(a) All limited guardians and guardians, including guardians of property, shall file annual reports with the Tribal Court providing an update on the condition of the ward and, if applicable, an accounting of funds collected and funds expended on behalf of the ward. Notice of the availability of such report shall be provided to interested parties and the report shall be available for review by interested parties.

(b) A review hearing shall be scheduled in conjunction with the filing of annual reports filed by any guardians upon the Court's motion or at the request of any interested party.

### **21.13. Resignation.**

(a) Any guardian who wishes to resign may apply in writing to the Court, setting forth the circumstances of the case. If a guardian of the estate or a guardian both of the estate and of the person, at the time of making the application, also exhibits the final account for settlement and if the Court is satisfied that the guardian has full accounted, the Court may accept the resignation of the guardian and discharge the guardian and appoint a successor guardian but the guardian so discharged and the sureties are still liable in relation to all matters connected with the guardianship before discharge.

(b) A guardian of both the estate and of the person who wishes to resign as guardian of the estate of the ward but continue as guardian of the person of the ward may apply for the partial resignation as provided in this Code.

**21.14. Appointment of Successor Guardian.** Upon the removal, death or resignation of a guardian, the Court shall appoint a successor guardian following the same criteria that would apply to the initial appointment of a guardian.

**21.15. Fiduciary Duty.** All persons acting under a power of attorney, limited guardianship, guardianship, or guardian of property and any person or agency appointed to act on behalf of a minor under this code acts in a fiduciary capacity. As a fiduciary, one owes a duty to act in the best interest of the minor, exercising sound judgment and avoiding conflicts of interest. Any person acting as a fiduciary that breaches his/her fiduciary duties will be liable for any damages resulting from such breach.

## **SECTION 22 ADOPTION**

**22.01. Jurisdiction.** The Court shall have jurisdiction over all adoptions where: (a) the person to be adopted is a Tribal member; or, (b) the person to be adopted is eligible for enrollment is of Indian descent and the petitioner(s) is/are members of the Little River Band.

**22.02. Interested Parties in Adoption Proceedings.** The following parties have an interest in adoption proceedings involving children who are enrolled members of the Little River Band or who are eligible for enrollment in the Tribe:

- (a) the petitioner;
- (b) the Tribe, acting through the Binojeeuk Commission;
- (c) the adoptee if he/she is over fourteen (14) years of age;
- (d) the minor parent, adult parent, or surviving parent of a minor adoptee; however, such parent(s) shall not have the ability to nominate the petitioner or to refuse to consent to an adoption if the rights of such parent(s) have been involuntarily terminated by a court of competent jurisdiction;
- (e) any custodian of the child;

- (f) members of the child's extended family who are enrolled members of the Tribe;
- (g) the child placement agency, including the Tribe's Family Services Department or state social services agency, to which the adoptee has been or is proposed to be released or committed by order of a court of competent jurisdiction;
- (h) the parent or guardian ad litem of an unemancipated minor parent of the adoptee;
- (i) the Court and/or other court with continuing jurisdiction over the adoptee; and
- (j) the guardian or guardian ad litem of an interested party.

**22.03. Putative Fathers as Interested Parties.** In addition to the parties listed in subsection 22.02, putative fathers shall be considered interested parties when such persons are identified by a court of competent jurisdiction.

**22.04. Who May File Petition.** Any person over the age of twenty-one (21) may file a petition to adopt another person.

**22.05. Petition for Adoption.** An adoption proceeding is commenced by filing a petition for adoption with the Court. The petition shall be filed by the person(s) who wishes to adopt the child and has been nominated by the person(s) or child placement agency with the authority to nominate such persons. It shall be signed by the person(s) filing the petition and shall contain:

- (a) The full name, residence, documentary proof of date and place of birth and the degree of Indian blood of the adoptee;
- (b) The full name(s), residence(s), date(s), and place(s) of birth, degree(s) of Indian blood, occupation(s) and documentary proof of marital status of petitioner(s).
- (c) Proof of parental consent to the adoption, if applicable, and notice to the child's surviving grandparent(s), if any;
- (d) A copy of each release or order terminating parental rights over the child, if applicable;
- (e) A copy of the order of commitment of the child to a child placement agency or proof of a guardian's appointment, if applicable;
- (f) Proof of the child placement agency's release or consent to adoption and authorization to execute such release or consent to the adoption;
- (g) A statement by the petitioner(s) it is the desire of the petitioner(s) that the legal relationship of a parent and child be established between them and the adoptee;
- (h) A full description and statement of value of all property owned or possessed by the adoptee to the best of the petitioner's knowledge.

**22.06. Investigative Report.** Upon the filing of a petition for adoption, the Court shall request that the Tribe's Family Services Department investigate the stability of the adoptee for adoption, the financial ability, moral and physical fitness and general background of the adopting parent(s), and to file a report of such investigation, together with recommendations on the proposed adoption within thirty (30) days after receiving notice of the petition for adoption. The Court or the Family Services Department may request the assistance of any local, state or federal agency in obtaining information as to the suitability of the potential adopting parents.

**22.07. Recommendation of the Binojeeuk Commission.** Upon completion of the investigative report, the Tribe's Family Service Department shall submit the report to the Binojeeuk Commission and the Commission shall meet with the Tribal Family Service department and formulate a recommendation for the Tribal Court.

**22.08. Parental Consent to Adoption and Release for Adoption.**

(a) *Interested Parties.* In a proceeding to approve consent to adoption filed by the surviving parent(s) or guardian, the interested parties entitled to notice of such proceedings include, but are not limited to:

- (1) the person(s) executing the consent to adoption;
- (2) the adoptee if he/she is over the twelve (12) years of age;
- (3) the person(s) nominated by the parent(s) or guardian to adopt the child in such consent to adoption, if applicable;
- (4) the child placement agency to which the adoptee is proposed to be released, if applicable; and (v) the Little River Band Family Services Department and Binojeeuk Commission.

(b) *Consent Procedure.* Provided the Binojeeuk Commission does not object to adoptive parent(s) nominated by the parent(s) or guardian, the Court may enter an order of adoption when a written consent to adoption, executed by the surviving parent(s) or guardian, is filed with the Court. The consent or release must be signed in the presence of the Court. The Court shall satisfy itself on the record that the person(s) releasing for adoption, or consenting to the adoption, of their child(ren) have been informed of the nature and consequences of their actions.

- (1) The minority age status of parent(s) shall not be a bar to the right of consent nor shall it invalidate such consent or release.
- (2) The rights of non-consenting parents may be terminated pursuant to this Code. The Court may execute consent to adoption of such children or authorize the child placement agency with whom the child has been committed for care to execute such consent. In the event the Binojeeuk Commission objects to the acceptance of consent to adoption, the parent(s) or guardian, or the person(s) nominated by the parent(s) or guardian in the proposed consent to adoption, may file a petition for adoption in accordance with this section.

(c) *Withdrawal of Consent or Release for Adoption.* Any release or consent to adoption may be withdrawn by a parent(s) whose parental rights have not been terminated at any time before the entry of the final order of adoption.

**22.09. Hearing on Petition for Adoption; Open Adoption Permitted.** Within (14) days after receipt of the investigative report and recommendation from the Binojeeuk Commission, the Court shall schedule and hold a hearing to review the petition, documentation submitted in support of the petition, and the recommendations of the Binojeeuk Commission to determine if the proposed adoption is appropriate and in the best interests of the child. Such recommendations shall include consideration of provisions in the decree that allow continued or future contact or visitation with the child with his/her biological parent(s) and extended family of the biological parent(s). Such recommendations shall be based primarily on the best interests of the child, together with consideration of the wishes of the biological parent(s), the prospective adoptive parent(s) and the child.

**22.10. Appearance Mandatory.** The adoptee and adopting parent(s) shall appear in person at the hearing. The consenting parent(s) of the prospective adoptee shall also be required to appear at the hearing if the parental rights of such person(s) have not previously been terminated.

**22.11. Supervisory Placement.** If the Court determines that approval of the adoption petition is in the best interests of the child, the Court may enter an order terminating the rights of the consenting child placement agency, granting preliminary approval of the petition, making the child a ward of the Court, placing the child in the home of the prospective adoptive parents, and ordering periodic reports on the child's progress during the supervisory period, which shall not exceed three (3)

months. The Court may waive all or part of the supervisory period if the proposed adoptive placement is with a member of the child's extended family or if the child has been living with the prospective adopting parents for more than six months in a foster care or other situation.

**22.12. Final Hearing.** Not less than ninety (90) days, nor more than six (6) months, after the adoptee has been in custody of the adoptive parent(s), the parent(s), if any, the adoptee and adoptive parent(s) shall appear before the Court. They shall report to the Court about the welfare of the adoptee, the current status of their home and the desire of the adoptive parent(s) to finalize the adoption.

**22.13. Adoption Decree.** If the Court is satisfied that the interests of the adoptee are best served by the proposed adoption, the Court shall enter an order terminating the rights of the consenting parent(s) and/or entering a final decree of adoption. The Court may order or adoptive parent(s) may request a six (6) month extension of supervisory placement after which a final adoption decree must be entered or the adoptee shall be returned to the custody of the Court.

**22.14. Effect of Final Judgment.**

(a) After the final order of adoption is entered, the relation of parent(s) and child and the rights, duties and other legal consequences of a natural relation of child to parent(s) shall thereafter exist between the adoptee and the adoptive parent(s).

(b) The status of an adoptee as a member of the Tribe shall not be affected by adoption. An adoptee who is eligible for membership in the Little River Band shall be enrolled as a Tribal member prior to the finalization of the adoption.

(c) After the final order of adoption is entered, the natural parent(s) of the adoptee, except a natural parent who is the spouse of an adoptive parent, shall be relieved of all parental responsibilities for such adoptee and have no right regarding the adoptee or right to inherit property by descent or distribution.

(d) Minors adopted by order of the Court shall assume the surname of the person(s) by whom they are adopted unless the Court orders otherwise. Such adoptees shall be entitled to the same rights of person and property as children or heirs of the adoptive parents.

**22.15. Confidentiality.** Unless the Court orders otherwise, hearings held in proceedings under this chapter shall be confidential and shall be held in closed session, without the admission of any person other than the interested parties and witnesses. All papers, records, petitions or files pertaining to proceedings except the final judgment of adoption shall be maintained by the Court in locked files and shall not be released to anyone except pursuant to Court order. The Court may include provisions authorizing the biological parent(s), extended family members of the biological parent(s), and/or the adoptee access to certain papers, records, petitions or papers in its decree or final order of adoption. An adoptee upon reaching the age of majority shall have access to their adoption records.

## **SECTION 23 EMANCIPATION**

**23.01. Operation of Law.** Emancipation may occur by operation of law or pursuant to a petition by a minor with the Court. Emancipation occurs by operation of law:

- (a) When a minor is validly married;
- (b) When a person reaches the age of eighteen (18) years;
- (c) During the period when the minor is on active duty with the armed forces of the United States;



(d) For the purposes of consenting to routine, non-surgical medical care or emergency medical treatment to a minor when the minor is in the custody of a law enforcement agency and the minor's parent or guardian cannot be promptly located.

**23.02. *Petition.*** An emancipation may also occur by Court order pursuant to a petition filed by a minor with the Court.

(a) The petition must be signed by the minor and must include an affidavit by an individual having personal knowledge of the minor's circumstances who believes that under the circumstances emancipation is in the best interest of the minor.

(b) After the petition is filed the Court may assign an employee to investigate the allegations; appoint legal counsel for the minor; appoint legal counsel for the minor's parent(s) or guardian if they are indigent; or dismiss the petition if the minor's custodial parent does not consent and is providing support.

(c) The Court may issue an emancipation order if it determines that emancipation is in the best interest of the minor and the minor establishes that:

- (1) The minor's parent or guardian does not object to the petition;
- (2) The minor is at least sixteen (16) years of age;
- (3) The minor is a resident of the Tribe's nine (9) county service area;
- (4) The minor has demonstrated ability to manage financial affairs including proof of employment or other means of support;
- (5) The minor has the ability to manage personal and social affairs;
- (6) The minor understands the rights and responsibilities as an emancipated minor.

(d) The minor or parent or guardian of the minor may file an appeal from the Court's grant or denial of an emancipation petition or a minor emancipated by court order may petition the Court to rescind the order.

**23.03. *Rights and Responsibilities.*** A minor emancipated by operation of law or by court order will be considered to have the rights and responsibilities of an adult except for those specific constitutional and statutory age requirements regarding voting, use of alcoholic beverages and the health and safety regulations relevant to the minor because of age. A minor will be considered emancipated for the purpose of the following rights:

- (a) To enter into enforceable contracts;
- (b) To sue or be sued in the minor's name;
- (c) To retain the minor's own earnings;
- (d) To establish a separate domicile;
- (e) To act autonomously and with the right and responsibilities of an adult in all business relationships;
- (f) To earn a living;
- (g) To authorize the minor's own physical and mental health care;
- (h) To apply for a driver's license or other state or Tribal license;
- (i) To register for school;
- (j) To marry;
- (k) To apply to medical assistance programs administered under the State of Michigan Social Welfare Act or Indian Health Service or Tribal Health Services;
- (l) To apply for welfare assistance;
- (m) If a parent, to make decisions and give authority in caring for the minor and;
- (n) To make a will.

**23.04. Debts incurred by emancipated minor.** Parents of a minor emancipated by court order are not liable for any debts incurred by the minor during the period of emancipation.

## **SECTION 24 AUTHORIZATION OF MEDICAL TREATMENT**

**24.01. Conditions Under Which Court May Authorize.** At any time, regardless of whether a child is under the authority of the Court, the Court may authorize medical or surgical care for a child when:

(a) A parent, legal guardian or custodian is not immediately available and cannot be found after reasonable effort in the circumstances of the case; and

(b) A physician informs the Court orally or in writing that in the physician's professional opinion, the life of the child would be greatly endangered without certain treatment and the parent(s), guardian or custodian refuses or fails to consent. If time allows in a situation of this type, the Court shall cause every effort to be made to grant the parent(s), guardian or custodian an immediate informal hearing but this hearing shall not be allowed to further jeopardize the child's life or health.

**24.02. Consideration by the Court.** In making its order the Court shall give due consideration to any treatment being given the child by prayer through spiritual means alone or through other methods approved by Tribal customs or traditions or religions, if the child or the parent(s), guardian or custodian are adherents of an established religious denomination that relies on this form of treatment in lieu of medical treatment or practice the Tribal customs, traditions or religious which is relied upon for such treatment of the child.

**24.03. Oral Authorizations by Court.** Oral authorization by the Court is sufficient for care or treatment to be given and shall be accepted by any physician or hospital. No physician or hospital nor any nurse, technician or other person under this direction of such physician or hospital shall be subject to criminal or civil liability in the Court for performance of care or treatment in reliance shall be regarded as if it were performed with the child's and the parent(s') authorization.

**24.04. Authorizations Reduced to Writing.** After entering any authorization under this section, the Court shall reduce the circumstances, finding and authorization in writing and enter it in the records of the Court and shall cause a copy of the authorization to be given to the appropriate physician, hospital or both.

## **SECTION 25 DRUG ABUSE DURING PREGNANCY**

**25.01. Jurisdiction.** The Court may take jurisdiction of a pregnant woman who has engaged in abuse of alcohol or a controlled substance upon a showing by a preponderance of the evidence that the woman is pregnant and abusing alcohol or controlled substance.

**25.02. Court Orders.** Upon assuming jurisdiction, the Court may enter orders regarding such person requiring the woman to refrain from drug abuse, submit to reasonable measures to assure non-use and comply with community based or in-patient treatment programs. Such court orders may be enforced through the Court's civil contempt power.

**25.03. Information.** Information made available to a Court order regarding a woman's drug use during pregnancy may not be used in a criminal prosecution against the woman.

## **SECTION 26 REHEARING**

**26.01. *Time and Grounds.*** A party may seek a rehearing or new trial by filing a written motion stating the basis for the relief sought within twenty-eight (28) days after the decision of disposition or supplemental disposition. The Court may entertain an untimely motion for good cause shown. A motion will not be considered unless a matter not previously presented to the Court or presented but not previously considered by the Court which if true would cause the Court to reconsider the case.

**26.02. *Notice.*** All parties must be given notice of the motion in accordance with this Code.

**26.03. *Response.*** Any response by parties must be in writing and filed with the Court and opposing parties within five (5) days after notice of the motion.

**26.04. *Procedure.*** The Judge may affirm, modify or vacate the decision previously made in whole or in part on the basis of the record, the memoranda prepared or a hearing on the motion whichever the Court in its discretion finds appropriate for the case.

**26.05. *Hearings.*** The Court need not hold a hearing before ruling on a motion. Any hearing conducted shall be in accordance with the rules for disposition hearings. The Court shall state the reasons for its decision on the motion on the record or in writing.

**26.06. *Stay.*** The Court may stay any order pending a ruling on the motion.

## **SECTION 27 TRIBAL COURT APPEALS**

**27.01. *Who can Appeal.*** Any party to a Court hearing held under this Code may appeal a final Court order to the Little River Band of Ottawa Indians Appellate Court. An order terminating parental rights is appealed by right.

**27.02. *Time Limit for Appeal.*** Any party seeking to appeal a final Court order shall file a written notice of appeal with the Court within twenty-eight (28) days of the final order.

**27.03. *Review Standard.*** The clearly erroneous standard shall be used in reviewing the findings of the Court on appeal.

**27.04. *Record.*** For purposes of appeal, a record of proceedings shall be made available to the child, the parent(s), guardian or custodian, the child's counsel and others upon court order. Costs of obtaining this record shall be paid by the party seeking the appeal.

**27.05. *Stay of Appeal.*** A court order may be stayed upon order of the Appellate Court.

**27.06. *Conduct of Proceedings.*** All appeals shall be conducted in accordance with the Tribal Code and Tribal Court Rules of Procedure as long as those provisions are not in conflict with the provisions of this Children's Protection Code.

## SECTION 28 FOSTER HOME STANDARDS

**28.01 *Foster Home Certification.*** An individual or entity may apply to the Binojeeuk Commission for a license for a foster home for the care of children as provided in this Section.

**28.02 *Foster Home Standards.*** A home may be licensed as a foster home under this section if it is:

- (a) located on the Tribe's reservation or trust lands; or
- (b) an extended family placement for the child to be placed in it. An extended family placement is a placement with an adult related to the child as a grandparent, aunt or uncle, brother or sister, brother in law or sister in law, niece or nephew, first or second cousin or stepparent; or
- (c) a home located off the Tribe's reservation or trust lands.

The following standards shall be applicable to the foster home:

- (a) The home shall be so constructed, arranged and maintained so as to provide adequately for the health and safety of occupants.
- (b) Water supply systems must meet the requirements for safe drinking water. Sewage disposal systems shall be environmentally safe. An inspection for water quality may be required.

The following standards shall be applicable to the foster family:

- (a) All members of the household must be in such physical and mental health as will not affect adversely either the health of the child or the quality and manner of his care.
- (b) Members of the foster family shall be of good character, habits and reputation; relationships within the family shall be such that a wholesome atmosphere for the child will be assured. All members of the foster family shall be willing to accept the foster child into the home as a member of the family group.
- (c) The persons in charge of the foster home shall be of suitable temperament to care for children; shall understand the needs of children; shall be capable of handling an emergency situation promptly and intelligently; and shall be willing to cooperate fully with the children's own parents and/or the supervising agency.
- (d) Infants and young children shall never be left alone without competent supervision. Older foster children may be left based upon their individual maturity and development skills.

**28.03. *Waiver of Standards.*** A foster home standard may be waived in writing by the Binojeeuk Commission, for good cause shown, in writing on a case by case basis.

## SECTION 29 GROUP HOME STANDARDS

**29.01 *Group Home Certification.*** An individual or entity may apply to the Binojeeuk Commission for a license for a group home for the care of children as provided in this Section.

**29.02 *Group Home Standards.***

(a) A home may be licensed as a group home if it is located on the Tribal lands of the Little River Band of Ottawa Indians.

(b) Employee records shall be maintained for each employee and shall include all of the following:

- (1) Name.
- (2) Verification of education where minimum education requirements are specified by rule.
- (3) Work History.
- (4) Three references.
- (5) A record of any convictions other than minor traffic violations. Where such references are not available or practical to obtain prior to the employment date, the employee shall provide a certification as to the existence of any record of convictions; provided, such request for record clearances is made prior to the date of employment.
- (6) Written evaluations of the employees shall be performed on a regular basis. The first evaluation shall be performed at the end of the probationary period. Subsequent evaluations shall be performed on a periodic basis but not less than annually.

(c) The licensee shall have a sufficient number of administrative, supervisory, social service, direct care and other staff to perform the prescribed functions required by this Section and to provide for the needs, protection and supervision of residents.

(d) The ratio formula for direct care workers shall correspond with the institution's purpose and the needs of the residents and shall assure the continual safety, protection and direct care and supervision of residents.

(e) The licensee shall develop and adhere to a written staff-to-resident ratio for direct care workers.

(f) The licensee shall document that each employee and volunteer who has contact with residents four or more hours per week for more than two consecutive weeks is free from communicable tuberculosis

(g) A person with ongoing duties shall be of good moral character, emotionally stable, and of sufficient health, ability, experience and education to perform the duties assigned.

(1) The person shall provide certification as to the existence of a criminal record which shall indicate specific convictions. This record shall be indicative of a person of good moral character.

(2) The person shall provide certification that they have not been found in substantiation of child abuse or neglect.

(3) Subsections (a) and (b) shall be confirmed through independent verification.

(h) The licensee shall provide an orientation program for new employees. The orientation shall include the following:

(1) The institution's purpose, policies, and procedures, including discipline, crisis intervention techniques, and emergency and safety procedures.

(2) The role of the staff members as related to service delivery and protection of the child.

(i) The following environmental safety standards shall apply to group homes:

(1) Group Homes shall be inspected for health and safety issues at least once per calendar year by a qualified agent independent of Group Home staff.

(j) An institution shall provide sufficient resident living space, office space and equipment to assure delivery of licensed services.

(1) Sleeping rooms shall provide adequate space for each resident.

(k) An institution shall establish and follow written procedures for potential emergencies and disasters, including fire, severe weather, and medical emergencies and missing persons.

(l) An institution shall assure resident and parent privacy and confidentiality and shall protect residents from exploitation.

(m) An institution shall establish and follow written policies and procedures regarding discipline and behavior management. Upon request, these shall be available to all residents, their families and referring agencies. Staff shall receive a copy of these policies and procedures and shall comply with them.

(n) An institution shall establish and follow written health service policies and procedures addressing all of the following:

(1) Routine and emergency medical and dental care.

(2) Health screening procedures.

(3) Maintenance of health records.

(4) Storage of medicines.

(5) Dispensing medication.

(6) Personnel authorized to dispense medications.

(o) Any serious injury or illness requiring hospitalization of a resident shall be reported to the parent and responsible referring agency as soon as possible, but not more than 24 hours later. This rule does not apply to emergency room treatment where the illness or injury is treated and the resident is not hospitalized. In such cases, the parent shall be notified, but not necessarily within 24 hours.

(p) The death of a resident shall be reported immediately to the parents or next of kin, the Director of the Family Services Department, and referring agency.

(q) The following treatment planning standards shall apply to group homes:

(1) A child shall be admitted only after establishing that the institution is an appropriate placement to meet the child's needs.

(2) Upon admission, all of the following shall be in the resident's case record:

(i) Name, address, birth date, sex, race, height, weight, hair color, eye color, identifying marks, religious preference and school status.

(ii) A brief description of the resident's preparation for placement and general physical and emotion state at time of admission.

(iii) Name, address, and marital status of parents and name and address of legal guardian, if known.

(iv) Date of admission and legal status.

(v) Documentation of legal right to provide care.

(vi) Authorization to provide medical, dental, and surgical care and treatment.

(vii) A brief description of the circumstances leading to the need for care.

(3) A case record shall be maintained on each resident.

(4) Medical treatment and health services shall be provided as follows:

(i) Medical treatment shall be under the supervision of a licensed physician.

- (ii) An institution shall provide and document periodic physical examination for each resident as follows, unless greater frequency is medically indicated.
- (iii) Sufficient health history information shall be documented for each resident to assure proper medical care.
- (iv) A resident shall have current immunizations as required by the Department of Public Health and/or the Michigan Department of Education.
- (v) A licensee shall arrange for the provision of and shall document dental examination and treatment of each resident. A dental examination within 12 months prior to admission shall be documented or there shall be an examination not later than three months following admission. Reexamination shall be provided at least annually.
- (r) An initial service plan shall be completed.
- (s) An updated service plan shall be completed and recorded for each resident.
- (t) When a resident is discharged from institutional care a Group Home Care Termination Summary will be completed.

**29.03 Waiver of Standards.** A Group Home Standard may be waived in writing by the Binojeeuk Commission, for good cause shown, on a case by case basis.

## SECTION 30 CHILDCARE FACILITY STANDARDS

**30.01 Center Licensing.** An individual or entity may apply to the Binojeeuk Commission for a licenses for a Childcare Facility as provided in this Section.

**30.02 Center Staff.** A center must keep on file verification of the educational qualifications and current job descriptions for all center staff.

**30.03 Center Staff Qualifications.** All center staff must complete a background criminal history check per Little River Band of Ottawa Indians background check policy.

**30.04 Number of Staff.** A center must provide appropriate care and supervision of children at all times by meeting or exceeding the standards in this Section. The ratio of center staff to children present at one time in the center and during outdoor activities must be based upon the following provisions:

- (1) For children one month to one year of age, there must be one (1) center staff per four (4) children.
- (2) For children one to three years of age, there must be one (1) center staff per four (4) children.
- (3) For children three to six years of age, there must be one (1) center staff per seven (7) children.
- (4) For children seven years to twelve years, there must be one (1) center staff per ten (10) children.

**30.05 Program Requirements.** A center must adhere to the following requirements:

- (a) provide a program of daily activities and relationships that promote opportunities for emotional, social, physical, cognitive and cultural developmental growth of each child;
- (b) permit parents to visit the program anytime during operating hours;
- (c) provide each child in attendance for five (5) or more hours per day an opportunity to rest.
- (d) ensure that a child is not in care for more than ten (10) hours per day.

**30.06 Discipline.** Center staff must use positive methods of discipline which encourage self-control, self-direction, self-esteem and cooperation. Non-severe discipline or restraint may be used when necessary, based on a child's development, to prevent a child from harming himself or herself or to prevent a child from harming other persons or property, excluding those forms of punishment prohibited by this subsection. Staff must be prohibited from using the following as a means of punishment:

- (a) Hitting, spanking, shaking, biting, pinching or inflicting any form of corporal punishment.
- (b) Restricting a child's movement by binding or tying him or her.
- (c) Inflicting mental or emotional punishment, such as humiliating, shaming or threatening a child.
- (d) Depriving a child of meals, snacks, rest or necessary toilet use.
- (e) Confining a child in an enclosed area, such as a closet, locked room, box or similar cubicle.

A center must have written policy regarding the discipline of children. This policy must be furnished to parents and staff.

**30.07 Equipment Requirements.** A center must provide the following:

- (a) an adequate and varied supply of developmentally appropriate play equipment, materials and furniture that are safe, clean and in good repair;
- (b) a cot or crib (depending on the child's age) to each child who is enrolled five (5) or more hours per day for use during rest periods.
- (c) adequate floor space for the safe positioning of cots or cribs.
- (d) equipment and materials that provide for:
  - (1) Large and small muscle activity.
  - (2) Sensory exploration.
  - (3) Social interaction and dramatic play.
  - (4) Cognitive development through music, literature, and storytelling.
  - (5) Creative experiences through art and music.
  - (6) Cultural enrichment through storytelling, art, and literature.

**30.08 Food Service and Nutrition.** A center will follow regulations of the Michigan Child and Adult Care Food Program.

**30.09 Child Information Records.** A center must maintain the following records:

- (a) accurate updated child information forms on each child enrolled in the center;



(b) records of all accidents or illnesses which occur while a child is in care, which accident or illness may or may not result in hospitalization or death. This report must be submitted to the Director of the Family Services Department within twenty-four (24) hours.

(c) updated immunization records on file for each child or a waiver signed by the parent(s) denying or refusing due to medical or religious beliefs.

(d) a signed statement of the child's health based on an evaluation by a licensed physician or his or her designee which shall be updated every two (2) years thereafter. Restrictions, if any, on activities shall be stated by a licensed physician or his or her designee.

**30.10 Health of Personnel Requirements.** A center shall have on file a "Medical Clearance Form" completed by a licensed physician or his or her designee for each staff member which shall be updated every two (2) years. A center must have on file evidence that each staff or student is free from communicable tuberculosis and verified every two (2) years thereafter.

**30.11 Administration of Medications.** When a center administers medication, the following provisions must apply:

(a) All medications must be given or applied only with prior written permission from the parent. Prescription medication must have the pharmacy label indicating the physician's name, child's name, instructions, and name and strength of the medication and must be given in accordance with those instructions.

(b) Center staff must maintain a record as to the time and the amount of any medication given or applied.

(c) The medication must be in the original container, stored according to the instructions and clearly labeled for the specific child. Staff must keep the medication out of the reach of children and must return the medication to the parent or destroy when no longer needed.

(d) All staff must comply with the above regulations.

**30.12 Health Surveillance.** Health surveillance measures include the following:

(a) A center is responsible for reporting to the parent observed changes in the child's health or any accidents that may have happened to the child.

(b) A child too ill to remain in care must be placed in a separate area where he or she may be cared for and supervised until he or she can be taken home.

(c) A child that has contracted a communicable disease must not return to care until the child is no longer contagious as recommended by the Center for Disease Control.

**30.13 Admission and Withdrawal Criteria; Schedule or Operation; Fee Policy.** A center must provide each parent with a Parent Handbook, which includes all of the above mentioned information.

**30.14 Telephone Service.** A telephone must be available and accessible in the building during the hours of operation. Pay telephones are not considered as meeting this requirement. Emergency telephone numbers, including fire, police, poison control center and ambulance, must be posted.

**30.15 Indoor Activity Space.** For each child birth to two (2) years of age, a center must have a minimum of fifty (5) square feet of indoor activity space for use by and accessible to the child. For each child two (2) to twelve (12) years of age, a center must provide thirty-five (35) square feet of activity space for use by, and accessible to, the child. The following is excluded from child activity space.

- (a) Hallways.
- (b) Bathrooms.
- (c) Reception and office areas.
- (d) Kitchens.
- (e) Storage areas and cloakrooms.
- (f) Areas used exclusively for resting, sleeping or eating.

**30.15 Outdoor Play Area.** A center operating five or more continuous hours a day must have a safe fenced-in outdoor play area which allows no less than fifty (50) square feet per child. Age-appropriate play equipment must be provided.

**30.16 Sleeping Equipment; Seating for Staff.** Children less than twelve (12) months of age must sleep in cribs or beds with side rails and firm mattresses. Children over twelve (12) months of age must sleep in cribs or on cots provided by the center. Center staff may allow infants under the age of twelve (12) months who have fallen asleep in infant seats or swings, sufficient time to determine sound sleep before moving to a crib. A rocker or comfortable adult size chair must be provided for one-half (1/2) the staff on duty in each room.

**30.17 Health and Safety Provisions.** A center will be inspected for health and safety issues once per calendar year. The inspection will be completed by the Little River Band of Ottawa Indians Department of Public Safety. Findings and recommendations will be implemented by the center.

A center will be inspected for environmental health provisions by the Little River Band of Ottawa Indians Housing Department once a year. Findings will be implemented by the center.

## **SECTION 31 LICENSING**

**31.01 License required.** As set forth in sections 28, 29 and 30 of this Code no person or entity shall operate a Foster Home, Group Home or Child Care facility within the jurisdiction of the Tribe unless such activity is conducted at a facility licensed by the Binojeeuk Commission. A separate license shall be required for each location at which the licensed activity is conducted under this ordinance.

**31.02 Types of licenses:** The Binojeeuk Commission may issue each of the following types of licenses.

a. *Foster Home licenses.* This license shall be required for each location where a foster home is located.

b. *Group Home licenses.* This license shall be required for each location where a group home is located.

c. *Child Care Providers licenses.* This license shall be required for each location where family or group child care is provided.

**31.03 License Application Procedures:** To obtain a license for any activity regulated under the provisions of this ordinance, the applicant shall submit an application on the form approved by the Binojeeuk Commission. The licensing procedure consists of the following steps.

1. Submission of a completed application to the Binojeeuk Commission.
2. Home study and background checks conducted as directed by the Commission
3. Review of the application and associated materials by the Commission
4. Decision by the Commission
5. Written notification of decision to the applicant.

**31.04 Action on Applications:**

a. Within a reasonable time of receipt of the completed application the Binojeeuk Commission shall review the application and background investigation to determine if the license shall be granted or the application denied. If the application is denied the Binojeeuk Commission shall give written notice to the applicant within 14 days of the decision and shall set forth in writing the reason(s) for the denial. The notice shall also inform the applicant of the applicant's right to request a hearing and appeals. The applicant may file an immediate appeal with Tribal Court and the Tribal Court shall hear the appeal within 14 days of receipt of the appeal. The decision of the Tribal Court shall be final and may not be appealed to the Tribal Court of Appeals.

**31.05 Denial/Suspension/Revocation of License:** This section applies to any applicant who is adversely affected by a decision of the Binojeeuk Commission with regard to the denial, suspension or revocation of a license issued by the Binojeeuk Commission pursuant to this ordinance.

a. *Hearing upon denial or other adverse action.* Any applicant who is adversely affected by a decision of the Binojeeuk Commission in concern with the denial, suspension or revocation of a license applied for under this ordinance may request a hearing before the Binojeeuk Commission by written request submitted within 30 days following notice of action by the Binojeeuk Commission. Within 14 days following receipt of notice requesting a hearing, the Binojeeuk Commission shall afford the applicant an opportunity to appear and be heard before the Binojeeuk Commission, in person or with a representative or legal counsel, and to submit such evidence as the applicant or entity deems relevant in the matter. The Binojeeuk Commission may receive evidence from the applicant or licensee, the Tribe, or any person or entity that the Binojeeuk Commission deems relevant. The Commission shall either affirm or reconsider its decision to deny, suspend or revoke the license within 7 days following the hearing.

b. *Suspension/Revocation of License:* Any license may be suspended or revoked if the Binojeeuk Commission determines that any of the following has occurred:

1. The applicant has violated any of the standards set forth in this code.
2. The applicant has intentionally made a material false and misleading statement in a license application or to a member of the Family Services Department.

3. The licensee had refused to comply with any lawful order of the Binojeeuk Commission.

## **SECTION 32 SEVERABILITY**

**32.01. *Severability of the Ordinance.*** If any section, subsection, paragraph, sentence or other portion of this Ordinance is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of this remaining portions hereof.